

Federal Law Enforcement Training Center

FLETC

*Journal*

Volume 5, Issue 2 ❖ Fall 2007



# Presidential Visit

THE FLETC'S IMPORTANT ROLE IN U.S. BORDER SECURITY

The  
Federal Law Enforcement Training Center

We Train Those  
Who Protect  
Our Homeland



GLYNCO | ARTESIA | CHARLESTON | CHETENHAM | ILEA BOTSWANA | ILEA SAN SALVADOR



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How the U.S. Supreme Court case of Scott v. Harris determined “reasonableness” of the seizure.

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# Having Words



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

As the FLETC Journal Editorial Board reviews article submissions for each issue, we are unfailingly delighted at the range of knowledge and experience that the articles represent. From a comprehensive discussion of a new process for establishing physical fitness standards that will equitably determine who will become a law enforcement officer -- and who may need to find another line of work -- to an article on interviewing child witnesses, to a reflection on leadership; the articles that were selected for this issue run as wide a range as the people who work here.

We, at the FLETC, often tend to describe ourselves in terms of our fixed assets: the number of sites nationally and internationally, the number of acres we train on, the number of points on the firearms ranges, the numbers of cars and boats, the raid houses, the simulation facilities. Our true strength, though, lies in our people and our mission. With an instructional cadre that averages fourteen years of operational law enforcement experience in federal, state, and local agencies, working side by side with current law enforcement officers from our Partner Organizations, the FLETC offers an unmatched depth and breadth of knowledge, experience and collaboration. Every day, our instructors teach men and women how to act, how to react, how to interpret and apply the law, and how to make decisions that will affect the property, liberty, and lives of people in this country. Every day, our instructors evaluate students and determine whether they can be credentialed by their agencies to wield the authority of a Federal Law Enforcement Officer. It is an awesome responsibility and we are proud to represent, in this Journal, the people and the organization that do that job so well.

*Marie R. Bauer*



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The FLETC Journal is an unofficial law enforcement training magazine produced and published by the Federal Law Enforcement Training Center. It is published and printed through the Media Support Division in conjunction with the Government Printing Office. Circulation is 4,000 and the FLETC Journal is also available electronically by following the links at the FLETC website: <http://www.fletc.gov>.

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



# It's Only a Child! How Hard Can It Be? Interviewing Children

By Matt Hall

While I've enjoyed a 23-year career in law enforcement, I've had limited involvement in the investigation of child molestation. Emotionally, I have no tolerance for abusers. However, I've researched this area in detail and have had much training in this topic. Intellectually, I question the degree of unchecked oversight some states allow to family services organizations. After several years of foster parenting, I have adopted two little boys (one of which was abused), and thus have a concern that investigations should be sensitive in nature and conducted in a way that is fair for the victim and for all parties involved. My experience has taught me how easy it is to distort information from children.

This article will provide some basic insights into the potential problems of interviewing children. Children see and endure horrific situations. When interviewed properly, they can provide essential information for the investigator.

## The Problem

In the Behavioral Science Division, we teach that investigators should never use leading questions (i.e., "Was the car red?") with victims for fear that they will provide distorted information by just agreeing with

the investigator. Leading questions can be even more damaging when interviewing children.

Many of you may remember in the 1980s-1990s publicity given to false allegations of child abuse brought on by overzealous interviewers using such questions on children. "He hit you there, didn't he?" These techniques distort information with both adults and children. So, what can an investigator do?

The investigator must first remember that children are different from adults, and often even different from each other. Age and maturity do not enhance good communication skills. Good interviewers learn to evaluate the communication skills of the child while evaluating the truthfulness of their statements. "Memaw burnt me!" may simply mean that the oatmeal was too hot for breakfast, that "Memaw" had the stove on when he put his hand on it, or that Memaw stuck his hand into boiling water to

teach him a lesson. Don't ASSUME that you know what a child means. If you don't ask, you don't know!

Studies have indicated that only 5-8 percent of allegations of child sexual abuse have been found to be false. Unfortunately, that covers intentional deceit rather than misinterpretation or the distortion brought on by leading questions. In traumatic circumstances (such as divorces),

**Leading questions can be even more damaging when interviewing children.**

where parents prompt children, those numbers may be as high as 35 percent. In a society that claims that it is better that ten guilty go free than one innocent is jailed, that figure is simply unacceptable.

— A foster parent in Glynn County, Georgia, was accused by a 13-year-old girl of physically abusing her because the foster parent enforced a strict curfew for the girl. The girl was relocated to another home, along with the other children housed with the parent. An investigation ensued that eventually cleared the parent, but the damage was done. By the way, the 13-year-old called the foster parent and asked to live with her again.

— In a more serious case, a substitute teacher in Chicago, Illinois, threatened to report an unruly class of nine-year-olds. One girl paid others to claim the teacher fondled them. The statements conflicted so clearly that the investigation exonerated the teacher. He has never worked in the school system again.

For every such case, however, we must remember that many serious crimes can be missed if we are not advocates for the innocent. On May 31, 2006, CNN carried a story where the American Civil Liberties Union had filed suit on behalf of six sex offenders in Indiana to overturn a regulation denying them access to playgrounds. It is important to remember that for every case proven to be unfounded, as many as seven children are molested in factually sound cases. Even if the previous 35 percent error rate (adult prompted) is unacceptable, remember 65 percent of the reporting children are accurately representing molestation, and molestation of any kind is reprehensible.

### Evaluating the Child

Okay, so the problem exists on both sides of the aisle. Some molesters go free and some innocents lose their freedom or reputation wrongfully. The question is how can we make both percentages lower? We must begin by trying to better understand children and their reliability.

Some states require “voir dire” examinations to establish the reliability of a child in understanding truth and lies. Studies have shown that children at the age of four and above have a good general knowledge of the concepts, but they base them on a “real or not real” perspective. At around age eight, they begin to understand the concept of mistakes versus lies. They then begin to understand what telling the truth is.

I know you’re probably thinking of your own kids and believing that they know truth and lies earlier, but consider this: You took the kids to the movies two weeks ago. They want to go to the movies and you say, “I just took you last week.” They see that as a lie. You see it as a mistake. At around eight to nine years old, they begin to understand the difference. Because of different developmental rates, experts differ on whether or not it is a good advance technique to ask “truth or lie” questions before the

**Studies have shown that children have a higher degree of “inaccurate” responses to direct questions (19%) than they have to narrative questions (9%).**

actual interview. From a lay perspective, I am concerned that such questions may condition the child to look for “tricks” in every question we subsequently ask, unless the reasons are explained. An excellent picture-based truth or lies technique can be found in “Qualifying Children to Take the Oath: Materials for Interviewing Professionals” by Lyon/Saywitz or excerpted at [depts.washington.edu/hcsats/pdf/guidelines/childinterviewguide.pdf](https://depts.washington.edu/hcsats/pdf/guidelines/childinterviewguide.pdf).

### Questioning

As I stated earlier, I have been teaching interviewing skills for 14 years. We teach interviewers to begin with narrative response questions, which often start with “tell me about...” While this is still valid, understand that children may have less to say in response to such questions. This may push the interviewer too quickly to ask closed-ended questions. Studies have shown that children have a higher degree of “inaccurate” responses to direct questions (19%) than they have to narrative questions (9%).<sup>i</sup> The reason is really pure logic. To narrative response questions, children report what they want to report. In direct questions, children respond to things they may not remember, and thus they embellish.

In a child's mind, a question asked by an adult deserves an answer. If that answer does not exist in their memory bank, they can find it in their fantasy world and then it becomes the truth. Always make sure you tell a child before beginning an interview that to answer "I don't know" is acceptable.<sup>ii</sup>

The caution here is to be very careful in your use of direct questions. I did not say don't use them, just be careful. Direct questions can be very suggestive of the answer desired by the interviewer. Additionally, Deborah Reith, an Investigator for the states attorney office in Daytona Beach, Florida, and instructor for the Institute for Police Technology and Management (IPTM), says that "questions should be one word longer than the child's age." (Keep it simple.)

— In one study, preschoolers were told about a child who got his finger caught in a mouse trap and had to go to the hospital. The children were then asked if that had ever happened to them. Over half gave narrative responses about going to the hospital with a mouse trap on their finger. Twenty-seven percent then locked into the response and insisted that it was the truth.<sup>iii</sup> This is a good example to remember in case you are tempted to say, "Once a father hit his little girl. Has that ever happened to you?"

### Coaching

Another way that we can fail to support the child as a witness is by praising specific answers. Praising of the child is acceptable and even good, but praising should be a general attribute of the interviewer. Children are particularly susceptible to praise from someone in authority. We should thank children for their help, but a response of, "That was a really good answer" or "Thank you for answering that so well" should not be used. That may lead to embellishment with false (fantasy) information. Children aim to please. By the way, children read non-verbal messages or body language too. A quick smile at a response or a frown poorly timed can be just as troublesome as the aforementioned praise.

Another danger area of suggestibility comes from previous statements by others, especially parents. It is a good idea to ask the child if anyone else has talked to them about the situation before the interview begins. This may give you a more complete picture of the responses based on other's comments to the child. While this does not negate the usefulness of the child's statement, it can be a mitigating factor that may increase false or embellished information from the child.



**Another way that we can fail to support the child as a witness is by praising specific answers.**

## The Interview

Child interview specialists offer numerous variations in their approaches to interviews of children, but several uniformities exist. First, the interview should be conducted as soon as possible. This minimizes contamination from other adult sources. Let me summarize some good suggestions in a typically structured interview:

Introductions should be as informal as possible to relax the child. (“Hi, my name is Matt, and I get to talk to children as part of my job.”)

Rapport should be developed slowly to make the child feel relaxed and safe with the interviewer. This “settling-in period” should begin to paint the picture of a neutral interviewer who praises general help, but not specific responses. This period (setting baselines) should indicate the developmental level of the child and their knowledge of the difference between truth and “fibs”. It does need to be noted, however, that if you are getting nowhere after 15 minutes you may want to consider letting someone else do the interview. Rapport should not be built so slowly that it uses up the attention span of the child.

Questions should concentrate on obtaining narrative responses. Narrative responses from the child offer



### About the Author



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

the best source of valid information. Before moving to more specific or direct questions, remember to explain to the child that “I don’t know” is an acceptable answer. Leading or suggestive questions should be avoided at all cost.

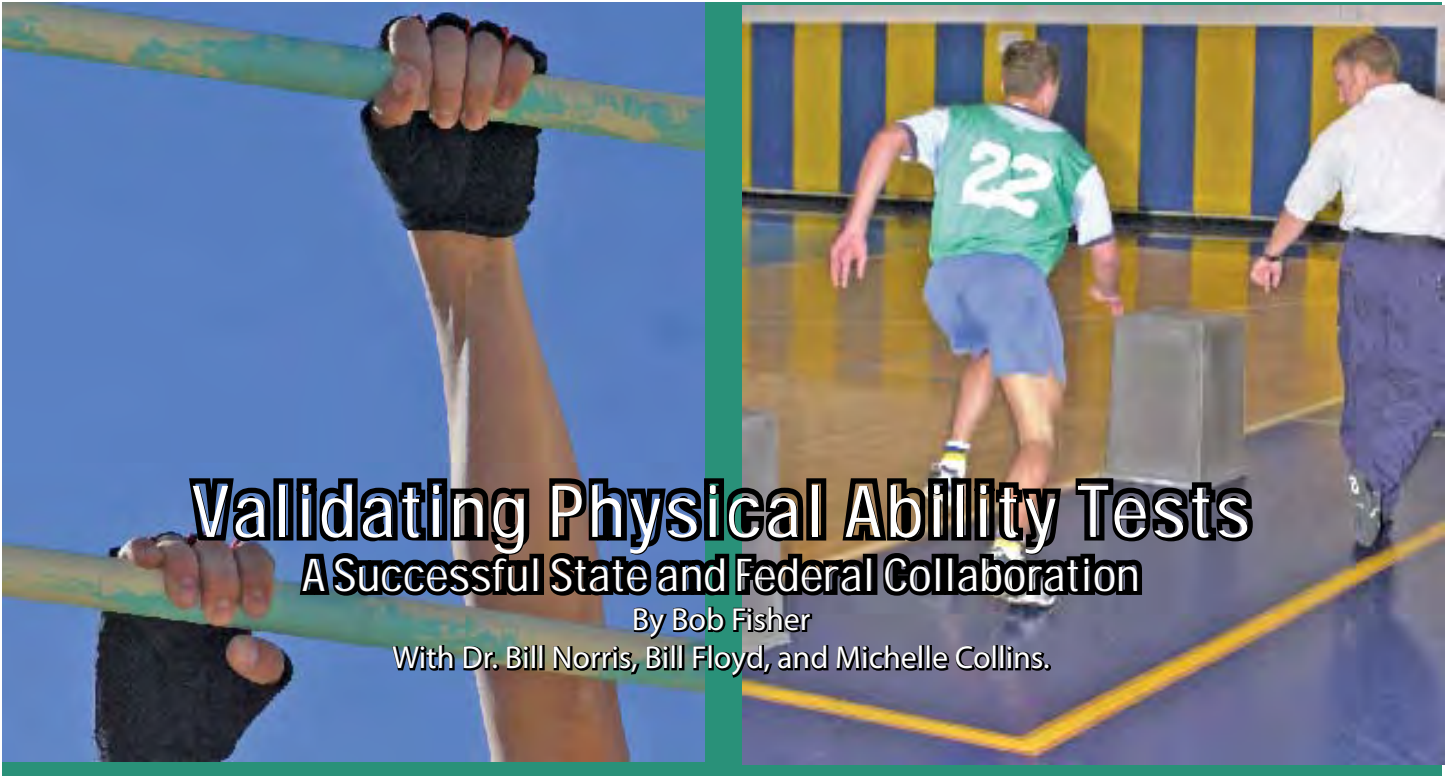
A summary of information should be restricted to only the main points discussed by the child. If a child has made extensive embellishments and the investigator repeats them back, they may solidify in their memory banks for future interviews. Again, the child’s natural attention span also requires limiting this area.

The close of the interview should provide a way that the child can talk to you in the future along with the reassurance that you will speak with the child again.

Finally, a child should not be interviewed once and then set aside awaiting a court date. Memories fade more quickly with children unless they are reinforced.

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# Validating Physical Ability Tests

## A Successful State and Federal Collaboration

By Bob Fisher

With Dr. Bill Norris, Bill Floyd, and Michelle Collins.

### Background

If we have learned anything about Physical Fitness Standards (PFS) in the past 25 years, it is this: it is all but impossible to do it alone. It requires a collaborative effort among the three key components: the physical training staff who are responsible for the physical readiness of the trainees, the administrators who must deal with the political and financial consequences of dismissals, and the legal staff who must speculate on the likelihood of future legal challenges. Furthermore, it is paramount that all three groups be informed, involved, and in agreement from the beginning. When they are not, the program is rarely, if ever, implemented.

Dr. Bill Norris made this observation to me in the form of an analogy using a three legged stool; the three legs being the physical, administrative, and legal components mentioned earlier. As we watched speaker after speaker describe their implementation process for establishing physical fitness standards at the National Conference on Law Enforcement Testing & Measurement hosted by the

**The crucial step at this point is: how you determine a minimum qualification necessary for successful performance of the job! We know that not everyone is qualified, but how can we accurately identify and distinguish them from those who are qualified?**

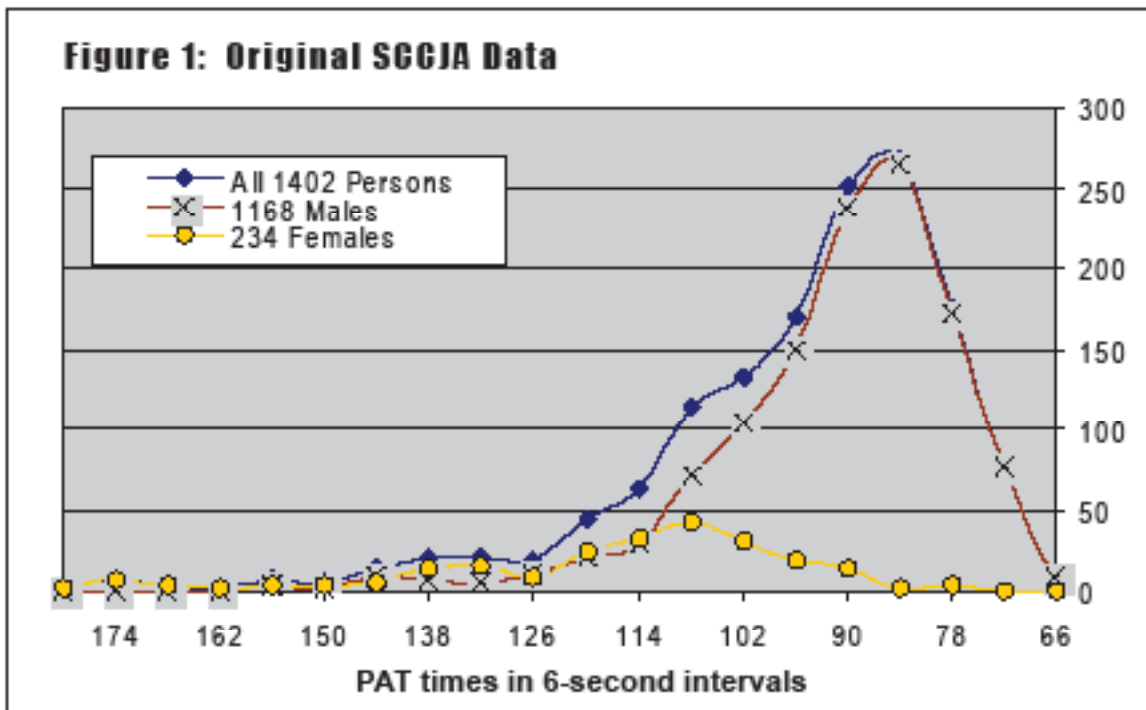
South Carolina Criminal Justice Academy (SCCJA), in 2004, it became clear that two-out-of-three legs was the best anyone could do.

The typical scenario went like this: an administrator tells the fitness coordinator to establish physical standards for the agency or academy. The coordinator either hires a specialist

from the outside or begins in-house by contacting other agencies with existing standards, conducts a valid job task analysis (JTA), designs a battery of obstacles that simulate those tasks, and assembles a group of experienced law enforcement officers (LEOs) to set the cut-off score. So far so good, but once they begin to collect student data and present those results to the administration and legal counsel, one or both of the other two legs typically fall off. Their concerns about the failure rate for older staff, females, and even those with disabilities routinely weaken their support for standards intended to provide a more capable workforce.

The fact that an employment standard produces adverse impact on these groups does not mean the standard is

**Figure 1: Original SCCJA Data**



the failure rate for the males, which meant that adverse impact would likely be a primary claim of any female that fails the test in the future. The administrators and lawyers were apprehensive about implementing such a standard and abandoned the cut score of 107 seconds. They replaced it with a standard that required only completion of the

illegal. To be lawful, the standard only needs to show that it is a “business necessity” and “job related”. In Lanning, et al. v. Southeastern Pennsylvania Transportation Authority, 308 F.3d 286 (3rd Cir. 2000) the Court stated that a Physical Ability Test (PAT), that produced adverse impact on women was nevertheless valid if it was “shown to measure the minimum qualification necessary for successful performance of the job in question”. The crucial step at this point is: how you determine a minimum qualification necessary for successful performance of the job! We know that not everyone is qualified, but *how* can we accurately identify and distinguish them from those who are qualified?

**Over the years, I have seen many well designed cognitive and psychomotor skills tests fail simply because the organization lacked the statistical expertise needed to set and defend their cut-scores.**

Bill Floyd has served the SCCJA as Program Manager for Instructional Standards as well as Research and his experience was no different. He started with a good JTA and implemented a well designed PAT. The SMEs were called upon to run the course and they set the minimum passing score at 107 seconds. They then started collecting student data and found the initial failure rate among females to be 70%, which was far more than the administrators had expected. It was also more than 20% higher than

PAT course in “one continuous motion.”

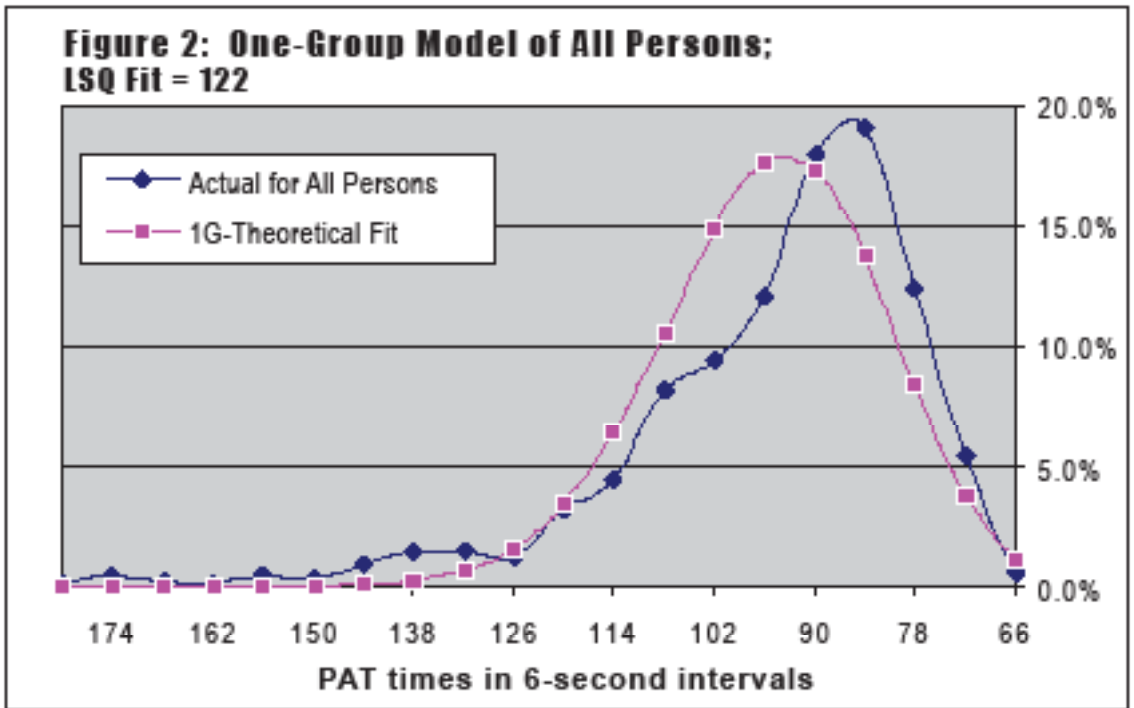
Over the years, I have seen many well designed cognitive and psychomotor skills tests fail simply because the organization lacked the statistical expertise needed to set and defend their cut-scores. This looked like one of those cases, so I asked Bill Floyd if he still had the data he collected under the more stressful 107 second limit. Bill had not only preserved the scores, he also had

videotapes of the students’ performance and agreed to let me analyze it. Dr. Norris and I took the data back to the FLETC and parsed each of the 1402 scores into its nearest discrete 6-second interval. The results are plotted in Figure 1.

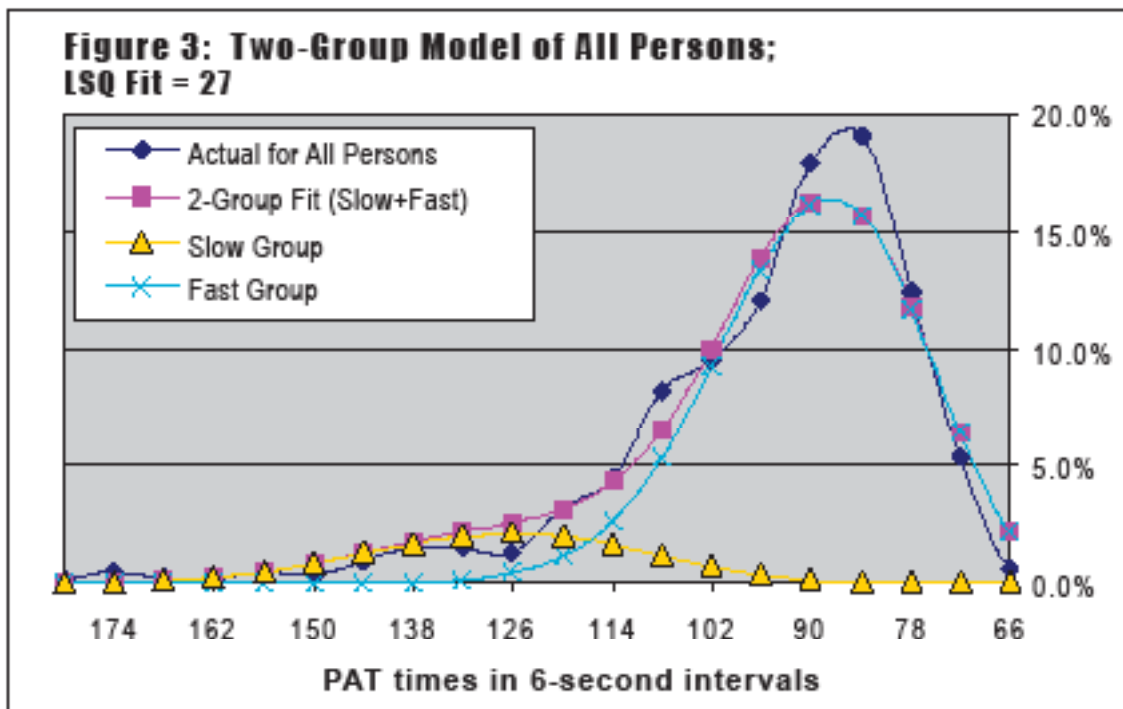
As I suspected, the shape of the graph looked very much like the work we had done at the FLETC in mapping multiple choice exam results and then modeling those results with binomial equations. The theory in support of modeling is quite simple: if our selection and training programs were perfect, everyone would be ready for a gun and a badge upon completion of the training. This would be one homogenous group, and the distribution of scores would be predicted by the single equation as shown in Figure 2.

We know, however, that our selection processes are not perfect and neither is the training. This implies that two distinct groups are likely to be present, and if such groups exist, the distribution of scores should be more closely predicted by two equations than by one.

To test this theory, we constructed a normalized measure of congruence based on a least squares analysis and compared the results. We labeled our measure “LSQ Fit,” and defined it as equal to 100 times the sum of the square of the discrepancies between the real data and the theoretical model. A lower number indicates a better fit. Figure 3 clearly shows that the 2-group assumption is the better fit just from the proximity of the overlay of the real and theoretical curves (blue diamonds versus purple squares). The visual conclusion is confirmed mathematically (LSQ Fit = 122 for the one-group assumption, but only 27 for the two-group model).



Having statistical proof of the existence of two distinct groups changes our thinking about cut scores. First, we notice the imbedded and overlapping nature of the two groups (yellow triangle versus light blue x in Figure 3). This means that someone in the slower group may occasionally (by chance, circumstance, or whatever) do better than someone in the faster group who is having a bad day. Moving the cut score higher or lower simply changes balance between making a type 1 error (failing a qualified individual) and a type 2 error (passing an unqualified individual).



In the case of the SCCJA data, there is a distinct dip at 126 seconds in the actual data for all persons (indicated by the blue diamond curves above), and that lull appears in both the female and male curves of Figure 1. The two-group model also illustrates that the probability of failing qualified persons

was rather small at that point. So, we suggested that a minimum passing score of 126 seconds might be a good place to start in order to assess the errors and the impact of various retesting protocols on the ultimate failure rates.

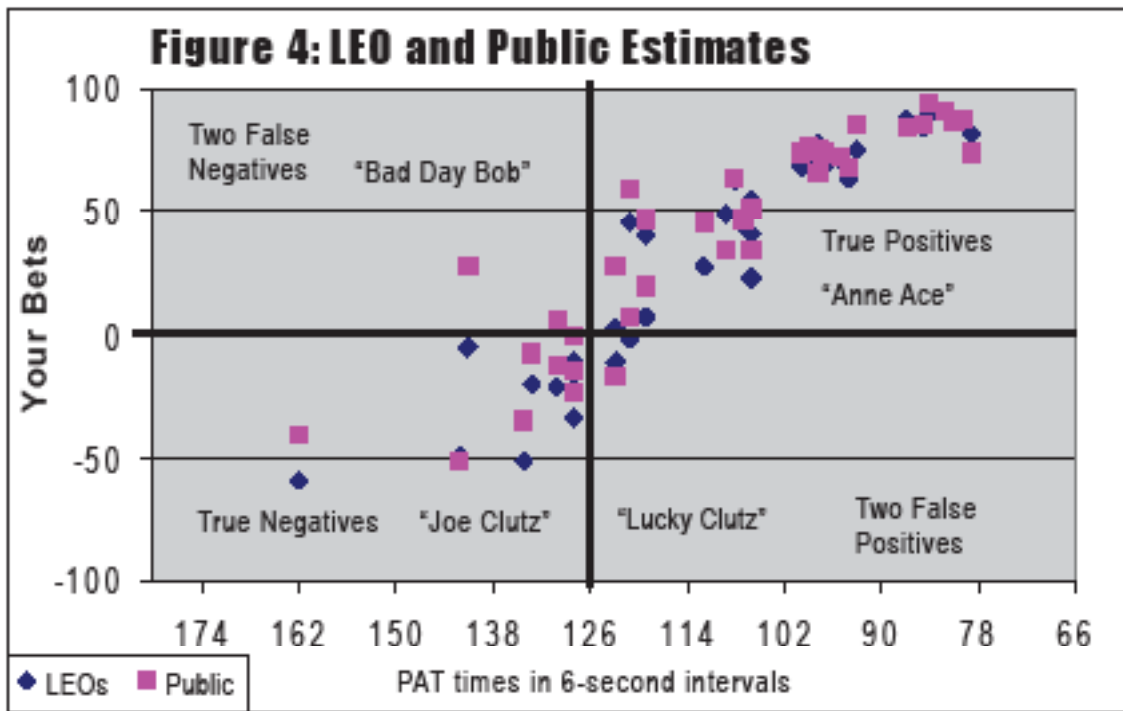
Dr. Norris and I presented our data at the 2005 SCCJA conference and arranged to run an informal experiment with the audience. Recalling that Bill Floyd had videotaped the students, we asked him to randomly pick a sample of those students with times above and below the 126 second cut-off. We then hid all the clocks and asked the participants to watch each runner and evaluate them as follows:

- Focusing only on how well or poorly each person performs the range of simulated law enforcement tasks,
- Answer this question, “In a crisis, would this person meet your expectations for a minimally qualified LEO?” (yes or no), then
- Estimate how sure you are by betting 5 to 99 cents next to each choice.

That evening, Dr. Norris and I plotted the results of the audience voting (Figure 4), which visually confirmed that the 126 cut-score did minimize both types of errors. Moving the cut-score higher or lower simply increases the false positives or false negatives, respectively. The shape of the distribution in Figure 4 also follows the logistic function suggested by Danish mathematician George Rasch as a good measure of the measurement itself.

The most striking result in Figure 4 is the closeness of the LEOs’ and the public estimates. We never specified what the “crisis” might be, so each person, whether cop or civilian, had a different image in mind. Yet simply by watching people run the obstacle course, they came to nearly identical conclusions.

The next morning, we presented these results to the conference participants, which included administrators from the SCCJA and their Legal Counsel. We wanted to confront the administrative and legal issues head-on. Our initial analysis, based on the empirical data in Figure 1, predicted initial failure rates at the 126 second standard



among females at 25.6% but only 2.1% for the males. Because this difference is more than 20%, the validity of the test would have to be defended in a gender based disparate treatment suit. We also had just created the pesky little problem of publicly admitting that no test is perfect, and we had proven that errors will occur in the SCCJA test as well. Had we not just weakened our legal

Knowing that the conference participants consisted of people with law enforcement experience and those without, we were careful to word our question, so it was answerable by both. We expected their perspectives to be different so we asked them to specify which they were so that we could separate their responses.

defense against any claimant dismissed by this or any other test? With our opening comments, we could almost feel the administrative and legal legs of the stool starting to buckle. We would need to rebuild a viable argument from the ground up.

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## Golden Rule Part II

by Andrew A. Smotzer

I wrote this article for those who want to move into supervision, supervisors with little experience, or veteran supervisors who want to change their management style. Hopefully this information will give you some ideas that will help in your job, and most importantly, in dealing with people.

In the FLETC Journal Fall Edition 2005, I wrote an article titled, “The Golden Rule.” In that article, I emphasized applying the golden rule. The article focused on treating everyone the way you like to be treated. It discussed empowerment, encouraging employees, and being positive. Of course, the golden rule is a very popular concept, but did you know it’s popular world wide? Tom Morris, the author of, “The Art of Achievement,” discusses this on pages 145 and 146 of his book. He notes a few examples of the various statements of the golden rule made throughout history:

**Confucianism:** “Do not do unto others what you would not want them to do unto you.”

**Buddhism:** “Seek for others the happiness you desire for yourself. Hurt not others with that which pains you.”

**Judaism:** “That which is hurtful to you, do not do to your fellow man.”

**Islam:** “Let none of you treat his brother in a way he himself would not like to be treated. No one of you is a believer until he loves for his brother what he loves for himself.”

**Taoism:** “View your neighbor’s gain as your own gain, and your neighbor’s loss as your own loss.”

Tom also wrote, “Moral leaders seek to live by the golden rule. Many of us believe it describes our practice. But the unfortunate truth is that most people seem to live by another principle altogether, one that I often call the Rule of Reciprocity, because it involves just reciprocating the sort of conduct we receive: Do unto others as they do unto you, or treat others the way you are treated. If I’m living reciprocally, then I’ll treat you well if you treated me well, but treat you badly if you’ve done so to me. One problem with the Rule of Reciprocity is that when you live by it you allow others to call the shots.”

“This is a truth of great importance, since it gives us one of the main reasons why unethical business practices are self-destructive. It may be easy to treat people badly one by one, or a few at a time, but over the long run, if you have treated enough other people terribly, and they are living reciprocally, then they are out there as a growing multitude preparing to do the same to you. And together,

they'll eventually have the power to bring you down."

People who live by the golden rule draw others to them in a positive way and help them rise up. If we show truthfulness, justice, and kindness in our actions, we will build successful relationships. It sounds like I'm talking about nice guys. I'm sure you've heard the old saying, "nice guys finish last." I look at it differently; how about "nice guys actually finish and last."

Since I'm talking about nice guys, how about Terry Francona, the head coach for the Boston Red Sox? When Terry was hired by the team, the biggest concern that the Red Sox's Executive staff had was they felt Terry was too nice of a guy to be a Major League Baseball head coach. They knew his knowledge, experience, and abilities were at that level, but they weren't sure about his toughness. Well, they hired Terry and the team went on to win their first World Series since 1918!

How about Tony Dungy, the head coach for the Super Bowl Championship team, the Indianapolis Colts. Coach Dungy is anything but the classic overbearing, intimidating football coach. Several of his players have said they can't remember the last time he yelled at them. He takes pride in that: Defensive tackle Dan Klecko said after the Super Bowl win, "We all wanted so bad to win it for him." Team President Bill Polian, who hired Tony five years ago concluded, "This is Tony's championship. There is no better role model in America today than Tony Dungy."

Let's not forget Tom Moore, Dungy's assistant, who is the offensive coordinator of the Indianapolis Colts. He prefers simplicity, he says, "It's a player's game and your job as a coach is to evaluate those players, understand their strengths and weaknesses, and build around that." He's been a coach for 30 seasons, and is 68 years old, and does not waver when it comes to his philosophy. As the Associated Press wrote, "Now he'll get to see how it works against the NFL's toughest defenses, the Chicago Bears active, fast, and physical units." Well they won! As we all know. Oh, by the way, Coach Moore was an assistant coach with the Pittsburgh Steelers years ago when they won two of their Super Bowls. As he always says, "It's about the players, it's not about me." So I guess nice guys can be successful in management roles. And that's my point; you don't have to be a micromanager, keep looking over your employee's shoulders, and be hard on them by having that high school football coach mentality. Be compassionate to their needs and concerns, put yourself in a supportive role, and see what the staff needs to teach their students

better, what type of training do they need to improve in their job performance, encourage and praise them when appropriate, be sensitive when critiquing negatively, and most of all be there for them. Major Dick Winters says it best in the book,

"Biggest Brother" on page 141, "My wonder is how the man can expect to be a leader when he's never around to lead." Or how about David Cottrell who has held senior management positions with Xerox and Federal Express and is the author of "Monday Morning Leadership" when he wrote, "You have to escape from management land and get in touch with your people." (Page 98). He also wrote, "People quit people before they quit companies." (Page 98). And one of my favorites by President Abraham Lincoln, "Nearly all men can stand adversity, but if you want to test a man's character give him power." Let's replace power with the word authority for our purposes.

I hope some of this information will help you in your supervisory career. If you just remember to always treat others the way you would like to be treated, you can't go wrong. Always remember your staff needs to be appreciated, so give awards when earned and most of all say "Thanks." Create an environment that your employees enjoy working in, always speak highly of one another, and treat each other with respect. Always be positive and set a good example for the staff. Most of all treat everyone the way you want to be treated.

### About the Author



Andrew A. Smotzer has served the FLETC for over 25 years. He is a former Secret Service Uniformed Division Officer and Firearms Instructor. At the FLETC, he has served as a Lead and Senior Instructor. He is currently a Branch Chief in the Behavioral Science Division at the FLETC in Glynco, Georgia. He is a graduate of the University of Maryland and author of numerous articles in several nationally published law enforcement magazines.



# ICE

Immigration Enforcement • Worksite Enforcement • Cyber Crimes • Gangs  
Fugitive Operations • Financial and Trade Investigations • Human Smuggling/Trafficking  
Detention and Removal • Physical Security • Intellectual Property Rights

## Watch Us Grow!

By Robert K. Baer  
Deputy Assistant Director in Charge

## ICE Academy

U.S. Immigration and Customs Enforcement was created four years ago from investigative and enforcement components of the U.S. Immigration and Naturalization Service, U.S. Customs Service and U.S. Federal Protective Service for the purpose of protecting the homeland. When created, the ICE Academy (ICEA) was comprised of a collective staff of approximately 60 employees to include Special Agents, Deportation Officers, Immigration Enforcement Agents, Deportation Officers, Intelligence Specialists, Physical Security Officers, Attorneys and Mission Support Specialists. Over the past few years the mission of the agency has been growing and the ICE Academy has been the benefactor of increased growth in both mission and staffing to meet mission requirements. As a result the ICEA staff now numbers over 150 employees, offers five basic law enforcement programs, over forty advanced or specialized law enforcement programs and has now spread across FLETC in ten buildings located in five different areas around the center. The agency and its training programs are growing so rapidly that it was recognized that there needed to be one consolidated voice to assess, develop and deliver all agency training aboard the FLETC and to achieve full FLETA accreditation. This spring the agency made a major stride in achieving this goal by reorganizing all training under one overarching umbrella, the ICE Office of Training and Development (OTD). The OTD is that voice and is responsible for all training agency-wide and here at the FLETC.

This past year has been a landmark year for ICE aboard the FLETC and next year looks to be even more challenging. The Office of Investigations (OI) is scheduled to train over 500 Special Agent basic trainees, the Office of Detention and Removal (DRO) will train over 1200 basic trainees for the second year in a row and the Intelligence basic program is projected to grow to more than 400 trainees. At any given time this year there are 800 ICE trainees on the center at a time in a combination of basic, advanced and specialized training. Additional growth within both ICE and FLETC has resulted in the two reaching an agreement that will move the ICE 287(g) state and local training program (with 350 projected trainees in FY08), some OI specialized training and all DRO advanced

training to FLETC Charleston beginning in FY08, a total of close to 2500 trainees the first fiscal year alone for a total of close to 5000 trainees aboard both FLETC facilities. Additionally, there are several exciting programs being developed that address the growing ICE mission regarding worksite enforcement, strategic technology and air operations.

This bi-lateral partnership and collaboration is an example of the strength that can be generated by two DHS entities when working together and one that solidifies the teamwork between these two large and well-respected DHS components for many years to come. Watch us grow!

### About the Author



Robert K. Baer is assigned as the ICE Office of Training and Development Deputy Assistant Director in Charge of the ICE Academy (ICEA). After joining the Federal government from the San Diego Police Department, DAD Baer began his Federal Law Enforcement career at the

San Ysidro Port of Entry as an INS Inspector. DAD Baer then transferred as an INS Special Agent to Los Angeles, CA, where he served in several high-profile investigative assignments to include the FBI Joint Terrorism Task Force, Special Investigations Unit, Anti-Smuggling Unit and the Benefit Fraud Unit. Baer transferred to FLETC as an instructor in 2001 and was promoted to Training Operations Supervisor in 2002. In 2004, DAD Baer was promoted to the position of Assistant Special Agent in Charge of the ICE Atlanta field office. In 2006, DAD Baer returned to FLETC as the Director of the ICE Detention and Removal Academy and was selected as the DAD in Charge of the ICEA in May of this year.

Baer is a 23 year veteran of the United States Navy and is a former enlisted Military Working Dog Handler/Military Police Investigator (NCIS). He was commissioned in 1996 and currently serves as the Commanding Officer of the NAS Jacksonville Naval Security Forces Unit and has been recently selected as the Commanding Officer of the NS Kings Bay Naval Security Forces Unit. Baer has several degrees and programmatic certifications to include: a BS in Criminal Justice, MS in Forensic Science, Masters Certificate in Crime and Intelligence Analysis and is a graduate of the USDA SES candidate program.

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#### FISA

An Overview for Officers and Agents



# Cyber Counterterrorism Investigations Training Program (CCITP)

By: Barry Lane



By the turn of the century virtually all known terrorist groups had a presence on the Internet. In February 2006, Gabriel Weimann, professor of communication at the University of Haifa, Israel stated that based on his research there were approximately 4800 “terrorists” websites operating which has increased from just 12 websites in 1998. In August of 2006, US Attorney General Alberto R. Gonzales said that more than 5000 Internet sites were being used by extremists to train and coordinate internationally, filling the gap caused by the crackdown on the Al Qaeda terrorist network. There is overwhelming evidence of terrorist groups using the Internet to engage in psychological warfare, propaganda, data mining, fundraising, recruiting, networking, information sharing, and planning and coordination. The Cyber Counterterrorism Investigations Training Program (CCITP) focuses on investigations and operations centered on these uses of the Internet by terrorists.

Terrorists today are highly sophisticated in their use of weapons, communications and planning techniques. They operate in a highly decentralized manner which makes

it difficult to locate and track more than a small cell of terrorists at any given time. They are using the Internet to collect large amounts of open source information to be used for the preparation and execution of their operations. Many of these terrorists’ organizations have recruited members with highly sophisticated degrees in such areas as computer science, biology and chemistry. In order to

effectively collect intelligence, conduct investigations and run operations against these threats we have to identify their methods and be able to operate within the same medium.

The CCITP introduces the criminal investigator, researcher or analyst to concepts and methodologies related to cyber-based intelligence collection operations and investigations. The target audience is criminal investigators, detectives, intelligence specialists, and intelligence analysts from the federal, state and local law enforcement community. This training program may also benefit those who are tasked with performing intelligence gathering, analysis, investigations and operations in a Task Force environment or for their own respective agencies.

**The CCITP introduces the criminal investigator, researcher or analyst to concepts and methodologies related to cyber-based intelligence collection operations and investigations.**



the presentations focus on the “cyber” aspect of investigative and/or information collection operations; the use of computer hardware, software and internet technology to aid the investigator and enhance their capabilities and efforts. The “counterterrorism” aspect is emphasized through specific examples of terrorists’ utilization of internet technology to direct and control their operations. And finally, the “investigations” aspect emphasizes the use

This FLETC advanced program guides attendees through a multi-faceted approach to information/intelligence collection, investigative research and/or targeting of various terrorist enterprises. By multi-faceted we mean that each element in the name of this program (Cyber Counterterrorism Investigations) has been developed into the course curriculum. Specifically, throughout this one week program



of traditional investigative methodologies in collaboration with the technological or “cyber” aspects.

Additionally, this program somewhat mirrors the continuous case methodology currently used in

the FLETC basic programs, albeit in a much more time condensed scenario. We have infused an investigative case scenario into the CCITP that specifically relates to the training presented. Although this case scenario must unfold in a very short one week program it is presented through a “Just-In-Time” application. This application presents students with a targeted block of instruction from which learning objectives and/or hard skills presented are immediately applied to the case scenario. This “Just-In-Time” approach builds sequentially throughout the week to ensure the case scenario is as realistic as possible. One of the primary goals of this training program is to enable the participants to develop information to a logical “point”. However, that logical point may not necessarily be a final prosecution. Realistically, once a target is attacked by

»» continued on page 26

### About the Author



**Mr. Lane retired from AFOSI in October 2005 after serving approximately 13 years as a special agent. Mr. Lane worked as a Counterintelligence agent and a Computer Forensic Field Examiner prior to instructing at the AFOSI academy at FLETC in Oct 2001. Following retirement from AFOSI he was hired as a Senior Instructor in the Computer and Financial Investigations Division specializing in internet investigations. Barry is currently assigned to the Enforcement Operations Division, Tactics Branch as a tactics instructor.**

# Staging the Event



Work crews started from scratch with plywood ...



... and paint ...

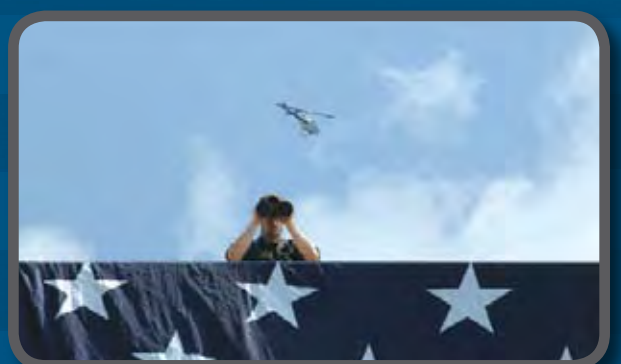


... and eager backs ...

## **Fast, Focused and Flexible**

The Federal Law Enforcement Training Center proved this motto just 72 hours before a visit by President George W. Bush and DHS Secretary Michael Chertoff, May 29.



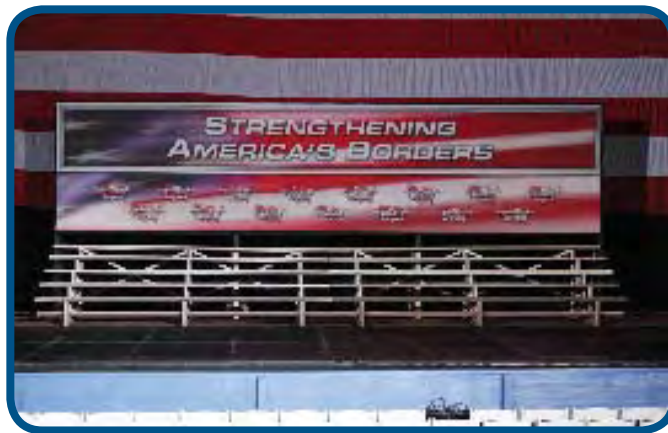




Lights were brought in as work continued overnight.



The stage was nearly set ...



... and then it awaited the guests.

"...This center is full of smart, capable instructors who are helping to train men and women who've volunteered to serve our country on the front lines of protecting the homeland. I am grateful to be in your midst..."

**PRESIDENT GEORGE W. BUSH**



# Scott v. Harris:

## What does this Supreme Court Decision mean to Law Enforcement?

By Pete Peterson

Rational people should never try to elude the police -- but sometimes they do and when they do, it may end in tragedy. The Supreme Court recently ruled on one such case – Scott v. Harris.<sup>i</sup> Scott v. Harris<sup>ii</sup> is a case that will now be in the forefront of the minds of law enforcement officers involved in hot pursuits. In Scott, the Supreme Court said that the extent of the suspect’s blame for the incident could be considered when deciding the “reasonableness” of the seizure by a police officer.<sup>iii</sup> Here are the basic facts of this case:

**Rational people should never try to elude the police - but sometimes they do and when they do, it may end in tragedy.**

In March 2001, a Georgia county deputy clocked the suspect’s (Victor Harris) vehicle traveling at 73 miles per hour on a road with a 55 mile-per-hour speed limit. The deputy drove up behind Harris and activated his blue flashing lights to pull Harris over. Instead of complying, Harris sped away initiating a chase down what is mostly a two-lane road at speeds exceeding 85 miles per hour. The deputy radioed his dispatch to report that he was pursuing a fleeing vehicle and broadcast its license plate number.

Deputy Timothy Scott heard the radio communication and joined the pursuit along with other officers in the area. In the midst of the chase, Victor Harris pulled into the parking lot of a shopping center and was nearly boxed in by the police vehicles. Harris evaded the trap by making a sharp turn and collided with Deputy Scott’s police car. Harris then exited the parking lot and sped off once again down a two-lane highway.

Following Harris’ shopping center maneuvering, which resulted in some slight damage to Deputy Scott’s police car, Scott took over as the lead pursuit vehicle. About six minutes and almost 10 miles into the chase, Scott decided to attempt to terminate the pursuit by employing a “Precision Intervention Technique” (PIT) maneuver. Scott radioed his supervisor for permission to do the PIT maneuver and was told by his supervisor to “go ahead and take (Harris) out,” indicating Scott had permission to conduct the PIT maneuver. Scott decided he was traveling too fast to perform the PIT so

he bumped the rear of Harris' vehicle with his push bumper. As a direct result of the bump, Harris lost control of his vehicle, left the roadway, traveled down an embankment, overturned, and crashed. Harris was critically injured and was rendered a quadriplegic.

The pursuing law enforcement officers drove vehicles with "in car cameras," which resulted in at least two videotapes that were admitted into evidence, including a videotape taken from Deputy Scott's vehicle. The tapes also provided evidence for the Supreme Court to review how reckless Harris was driving and how dangerous he was to others. As one commentator stated:

In its review of the case, the United States Supreme Court rejected the plaintiff's argument that they must only look at the facts found by the United States Court of Appeals for the 11th Circuit, which had concluded that Harris had fled in a somewhat safe manner. The Court decided that the facts,

**...the Scott case is not about cops having "free reign" to do as they please during a pursuit.**

a good idea to flee from the police. Most police agencies will pursue suspects and use whatever "reasonable" means are necessary to stop them before they hurt an innocent person. It is believed that in the coming

weeks and months, numerous attorneys, lower courts, agency administrators, the media, criminal justice educators and even police trainers will view the Scott decision from varying perspectives. One example of this is the headline to an article about the case, posted by the "Detroit Free Press" on May 1, 2007, which read: "*Court: Cops can force suspects to crash.*"<sup>v</sup>

Unlike the implication of this headline, the Scott case is not about cops having "free reign" to do as they please during a pursuit. This case is also not about whether a suspect being rammed by the police will be considered deadly force. In general, courts consider each case on the facts of that particular case. A police officer could use a ramming technique at a reasonable speed, and it may not be considered deadly force. The same can be said



with respect to Harris' dangerousness during the chase, were evident from a review of the video of the pursuit. They suggested that the United States Court of Appeals for the 11th Circuit should have reviewed the tape instead of relying on the trial court record. The Court concluded that the facts, as alleged by the plaintiff with respect to the chase, were clearly contradicted by the tape. The Court concluded that Harris' actions during the pursuit did pose a significant danger to other motorists.<sup>iv</sup>

The decision and the statements from the Supreme Court should send a message to everyone that it's not

about the Precision Intervention Technique (PIT), for the technique, as it is taught and trained, is not necessarily designed to result in deadly force. Ramming and PIT are techniques that have very different applications to a suspect's vehicle. Both techniques, when used in the proper place, at the proper time, and under the proper circumstances, can be considered quite suitable pursuit termination tactics. Further, it must be pointed out that any pursuit termination technique could possibly result in deadly force, and yet, depending on the particular facts of the case, be completely "reasonable" under the constitutional standards of Graham v. Conner<sup>vi</sup> and Tennessee v. Garner.<sup>vii</sup>





This case is about the suspect's Fourth Amendment rights and the suspect's own illegal actions leading to his injuries. As the Supreme Court said in Scott, "We lay down a ... sensible rule: A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death."<sup>viii</sup>

Dr. Geoff Alpert, professor of Criminal Justice and Director of Research for the College of Criminal Justice at the University of South Carolina, who describes himself as a "pursuit expert," claims that if officers would simply not pursue suspects, or, when suspects flee, if the police would discontinue any pursuit of that suspect, then suspects would surely slow down and not endanger the public. He further argues that one innocent life lost because of a pursuit is too many.

Dr. Alpert is correct that one innocent life lost in a pursuit is too many, but suspects should not be allowed to escape. As pointed out by the Supreme Court in Scott, the police need not take a chance that the innocent public will be protected, and tragic accidents be entirely avoided, by simply ceasing a pursuit and hoping for the best.<sup>ix</sup> First, there would be no way to convey convincingly to a suspect that the chase is off, and that the suspect is free to go.<sup>x</sup> A suspect, looking in his rearview mirror and seeing the police deactivate their flashing lights and turning around, would have no idea whether the police were truly letting him get away, or simply devising a new strategy for capture. Second, the Court said that it is "loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever [suspects] drive so recklessly that they put other people's lives in danger... [because] every fleeing motorist would know that [they could escape] if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights."<sup>xiii</sup>

Does this mean the police should pursue all law violators all the time? The answer is "no." Law enforcement officers must remember that those seizures must be "reasonable." They should continue to weigh all of the circumstances surrounding a particular

pursuit and, in so doing, there will be times when it makes sense to discontinue the pursuit and use good police work to catch the violator at a later time. However, in other cases, it may be "reasonable" to continue a pursuit in order to arrest the law violator.

**It's about time that the courts considered the culpability of the suspect, for it is the suspect who initiates the danger, not the police who respond to that danger.**

This Supreme Court ruling won't necessarily make the roadways safer; however, it should give police the latitude to exercise "reasonable" judgment without the

fear of being held civilly liable as a result of a lawsuit brought by a suspect who was pursued. It's about time that the courts considered the culpability of the suspect, for it is the suspect who initiates the danger, not the police who respond to that danger. However, what we don't want to happen is for officers to think they have "carte-blanch" authority to pursue anyone who tries to elude them and to use more force than is reasonable under the circumstances. Just as the court noted, the answer here is "reasonableness." Further, officers must still follow their agency policy (which can be more restrictive than the constitutional guidelines) or be ready to face administrative discipline for policy violations.

Police officers must realize that high-speed pursuits can injure innocent bystanders as well as suspects. The situation might have been different in the Scott case had the person who was injured been an innocent bystander. In such a situation, negligence principles under state law, rather than constitutional principles under federal law, might have been the focus. This is why some agencies have established policies against pursuing suspects for minor incidents. Will agencies change their policies because of

this decision? That's a question yet to be answered. In any case, if a vehicle can be identified, or the driver or owner can be identified and apprehended later, the pursuit should be evaluated for possible termination. This decision will depend on the circumstances at the time.

So how do we ensure officers understand the implications of the Supreme Court's decision and continue to use good judgment? The answer, of course, is **training, training, and more training.** The last thing we want is a court decision right after this one which finds an officer civilly liable for a pursuit instead of the suspect who caused the pursuit.

### References

- <sup>i</sup> 127 S.Ct. 1769 (2007).
- <sup>ii</sup> Id.
- <sup>iii</sup> 127 S.Ct at 1778.
- <sup>iv</sup> Jack Ryan , U.S. Supreme Court Decides on Scott v. Harris, Public Agency Training Council, May 2, 2007.
- <sup>v</sup> Author unknown, Posted by the Detroit Free Press, Froop.com powered by the Detroit Free Press May 1, 2007
- <sup>vi</sup> 490 U.S. 386 (1989).
- <sup>vii</sup> 471 U.S. 1 (1985).
- <sup>viii</sup> 127 S.Ct at 1779.
- <sup>ix</sup> See, Id.
- <sup>x</sup> See, Id.
- <sup>xi</sup> Id.
- <sup>xii</sup> Id.

Periodically, the investigator should re-contact the child to check their level of retention. This will also allow the child and investigator to develop a trust that may relate in even more information coming forward.

### Conclusion

They're just children, how hard can it be? It can be pretty hard or rather pretty easy to distort, taint, or embellish information. Children are valid witnesses with usual and sometimes unusual needs. As law enforcement, we are painstakingly adept at caring for our physical evidence. We must be just as painstaking at caring for our child witness. Let's not let another molester go free, nor another innocent suffer the cloud of false accusation because we induced a false memory in a child. Let's advocate for those who cannot advocate for themselves while bringing forth legitimate, prosecutable cases against the predators that make the precious world of the child a nightmare. Let's walk a path that protects all innocents.

### References

- <sup>i</sup> Poole & Lamb, Investigative Interviews of Children, American Psychological Association 1999, p. 53
- <sup>ii</sup> Annon, Jack S., Recommended Guidelines for Interviewing Children in Cases of Alleged Sexual Abuse, IPT-Forensics 1994, Volume 6, p. 2
- <sup>iii</sup> Op. cit, p. 61

a terrorist element our jobs are fairly clear cut regarding the investigation, apprehension and prosecution of the attackers. In today's environment, however our goal is to detect and prevent the attack from ever occurring. The challenge then becomes how do we go from little or no information to the logical point of do we initiate a formal investigation on our targets (and therefore allocate more resources) or end our inquiry and deem it unsubstantiated? This is the area CCITP is primarily focused on.

CCITP was developed for the low-level to average computer user and no special computer, internet and/or computer forensic skills are required for attendance. For further information regarding CCITP dates and registration please refer to the CFI webpage at [www.fletc.gov/cfi](http://www.fletc.gov/cfi) and chose Technology Investigations.

### About the Author



Mr. Peterson has over 38 years of Law Enforcement related experience. He spent approximately 14 years as a city police officer in Illinois. He then accepted a position with the Coastal Georgia Police Academy serving as the Basic Police Training Manager and Assistant Director, and later attained the position of Academy Director. After 8 years, he was offered a position as a Driving Instructor with the Federal Law Enforcement Training Center (FLETC), and has been with the FLETC for 18 years and is currently a Senior Law Enforcement Training Instructor for the Driver and Marine Division.

Mr. Peterson has a B.A. in Criminology from Saint Leo University, St Leo Fl. He has an A.S. Degree in Law Enforcement and Sociology from Richland College Decatur Il. He has attended over 70-law enforcement related training programs throughout his career.



# Is That Material Copyrighted?

by John Seaman

## Introduction

It has been said that a picture can be worth a thousand words. Certainly, as instructors of adult learners, we know that an instructional approach that appeals to more than one of the three learning modalities (visual, auditory, and kinesthetic) enhances student understanding and retention.

<sup>i</sup> Because different students assimilate new information in different ways, it is crucial that instructors present teaching materials in a manner designed to appeal to as many of the students' senses as possible.<sup>ii</sup>

Using modern media technology can definitely enhance the learning experience of adult learners, including those attending the Federal Law Enforcement Training Center (FLETC). Media technology allows instructors to bring the "real" world into the classroom and to reinforce instruction in a dynamic way. Use of this media technology, however, must be done with care because

there exists a body of law which controls how and when we can use materials created or produced by others. This body of law is called copyright.

## What is Copyright?

Copyright, Title 17 United States Code, is a body of law

that protects authors, artists, and others by giving them a monopoly over their created works. Created works include, but are not limited to, printed materials such as books and magazine articles, TV and radio broadcasts, videotapes and DVDs, music performance, photographs, training materials

and manuals, software programs, databases, and World-Wide-Web pages. This monopoly includes the right to control how created works are copied, distributed, displayed, performed publicly and used to create derivative works. A basic understanding of copyright is critical for instructors as the penalties for copyright infringement are very severe. A court may award up to \$150,000 for each

**A court may award up to \$150,000 for each separate, willful copyright infringement.**

separate, willful copyright infringement.<sup>iii</sup>

## Copyright is Not New

The basis for U.S. copyright law is found in Article I of the U.S. Constitution. Section 8, Clause 8 states “the Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” The First Congress implemented the Copyright Act of 1790. Due to advancements in technology, major revisions to the act were implemented in 1831, 1870, 1909, 1976, 1998, 2002, and continue to be implemented today.<sup>iv</sup>

## Public Domain Works Are Not Protected By Copyright

Not all works are protected under the copyright laws. Works that are considered to be in the “public domain” may be freely used. Any work published before 1923 is considered to be in the public domain. Works published or created between 1923 and 1978 are protected for a period of years depending on publication date and renewal. Since 1978, however, works generally have copyright protection

for the life of the author or creator plus an additional 70 years. In addition, since 1989, works are protected by copyright regardless of whether a copyright notice is displayed on the work and *regardless* of whether the copyright is registered with the United States Copyright Office.<sup>v</sup>

## If No Exception to Use Exists, Seek Permission

The general rule is that if a work is not considered to be in the “public domain,” or if no exception to use exists, then permission must be obtained from the copyright holder

**The general rule is that if a work is not considered to be in the “public domain,” or if no exception to use exists, then permission must be obtained from the copyright holder before protected materials may be used.**

before protected materials may be used. In the academic world, there are three major exceptions which apply to the use of copyrighted materials. These are: the face-to-face teaching exception, the fair use exception and the library exception (not addressed in this article).

*The face-to-face teaching exception:* Sections 110(1) and (2) of the Copyright Act allows non-profit educational institutions and government agencies to publicly display and perform copyrighted materials in the course of *face-to-face* teaching activities, so long as the protected material is directly related to the lesson objectives. In



2002, § 110(2) was expanded by The TEACH Act. The TEACH Act allows for the use of copyright protected material by an instructor, including displaying movie clips, photographs, music clips, etc., in *face-to-face* classroom teaching *and* digital distance education. The TEACH Act does *not* allow for the use of copyrighted materials where an instructor assigns students to study, read, listen to or watch copyrighted materials on their own time *outside* of the classroom. In addition, the provisions of The TEACH Act do not apply to materials that an instructor knows or should know were not lawfully acquired, or textbooks, course-packs and other materials typically *purchased* by students individually.

*The fair-use exception:* Title 17 United States Code § 107, called fair use, gives instructors limited ability to use protected material regardless of permission. Section 107 states: “[N]otwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.”

The fair use exception is not a blanket right to use copyrighted materials, but rather serves as a defense to copyright liability.<sup>vi</sup> Unfortunately, the four-part test listed above is difficult to apply as it is vague and very fact-dependent. In other words, one person’s fair use can still be another’s copyright infringement.

### The Proper Balance

One of the best business practices that balances proper adherence to the law, FAIR Use, and policy is to have a Standard Operating Procedure (SOP). This helps to

ensure uniformity among the instructors throughout the training environment. It also removes the “interpretation and application of law” from the hands of the non-legal instructor, that work having been performed by the Office of Chief Counsel and lawyers from the Legal Division.

### How Do I Get Permission From the Copyright Holder?

All copyright permissions or releases must be in writing and obtained from the copyright holder. When seeking permission to use copyrighted material, the requestor should include the following:

1. Title, author and/or editor, and edition.
2. Exact material to be used.
3. Number of copies to be made.
4. Intended use of the material, e.g., educational.
5. Form of distribution, e.g., hard copy to classroom, posted on internet.
6. Whether material is to be sold (e.g., as part of coursepack).<sup>vii</sup>

»» continued on page 38

### About the Author



John Seaman received a BA from Augusta State University, Augusta, Georgia and a JD from Georgia State University College of Law, Atlanta, Georgia. After law school he joined the U.S. Army Judge Advocate General’s Corps. His Army experience included prosecuting Courts Martial cases and serving as a Special Assistant United States Attorney (SAUSA). After serving in the Army, he began working as an Assistant District Counsel for the Department of Justice, Immigration and Naturalization Service. The I.N.S. subsequently became Immigration and Customs Enforcement under the Department of Homeland Security. While serving with the I.N.S. and I.C.E., he represented the government in immigration proceedings before the Department of Justice’s Executive Office of Immigration Review. He is a member of the Georgia and Arizona bars.

## Content versus Criterion Validation

The Achilles heel of any PAT has always been the cut-score. Everyone agrees that the content is valid if the simulated tasks in the PAT are derived from a JTA. This linkage documents that the obstacles on the PAT course are similar to situations encountered on the job. No one disputes it.

The criterion validity, on the other hand, always takes the hit because it has been based either on very weak statistical correlations to incumbent performance appraisals, or on the “professional opinions of SMEs.” The correlation method is standard textbook theory, but as numerous studies show, annual appraisals can be quite subjective and disconnected from actual performance on the job. This inherent lack of reliability means that the overall reliability of any correlation with those appraisals must be weaker still. The use of SMEs actually yields much more reproducible results, but when challenged as witnesses, the SMEs are hard pressed to say why they think 126 seconds is acceptable, while 127 is not. The lack of objectivity in this process makes it easy to understand why the attorneys and administrators get nervous about defending these tests.

The method of criterion validation that we used with the SCCJA suffers from neither of those problems, but instead turns them into strengths. Our legal argument is this:

Yes, everyone makes mistakes, but we take great pains to quantify those measurement errors and establish remediation and testing protocols that minimize their impact while balancing the rights of the individual with the needs of society.

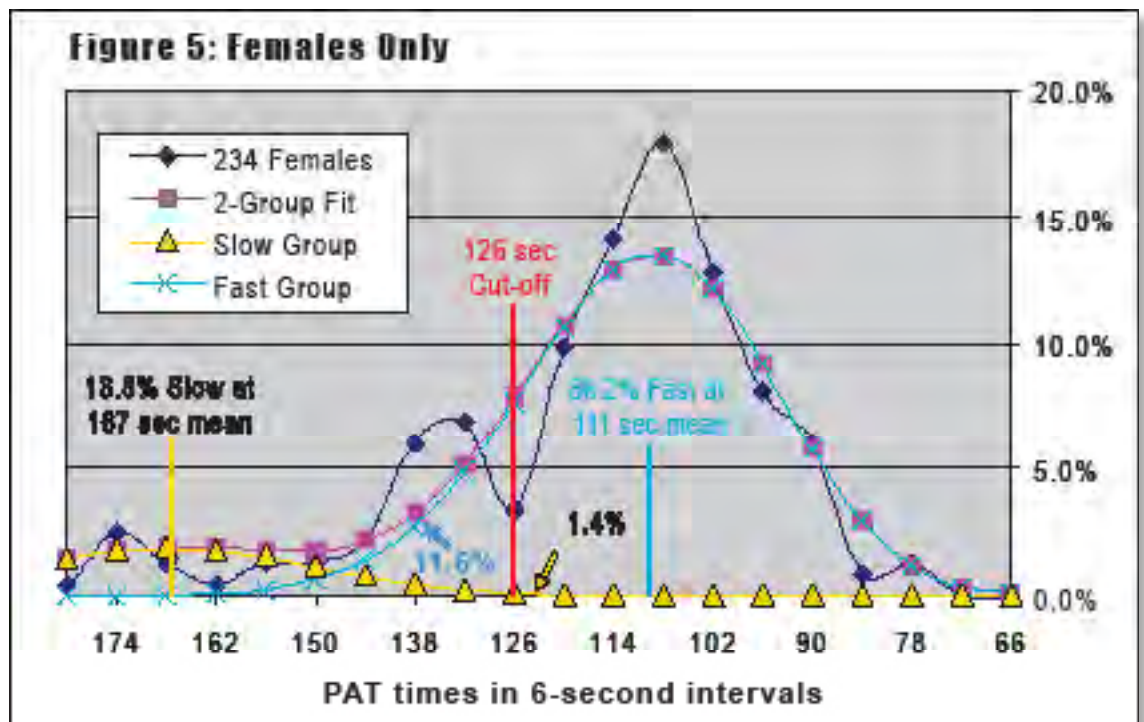
The results of Figure 4 demonstrated that all of us (the public and LEOs) have certain expectations when we call for a cop. It also

indicates that the PAT is a good predictor of those views. But we go further. By modeling the empirical data with purely mathematical equations, we quantify and predict the effect of various remediation and retesting protocols on the ultimate failure rates for females and males.

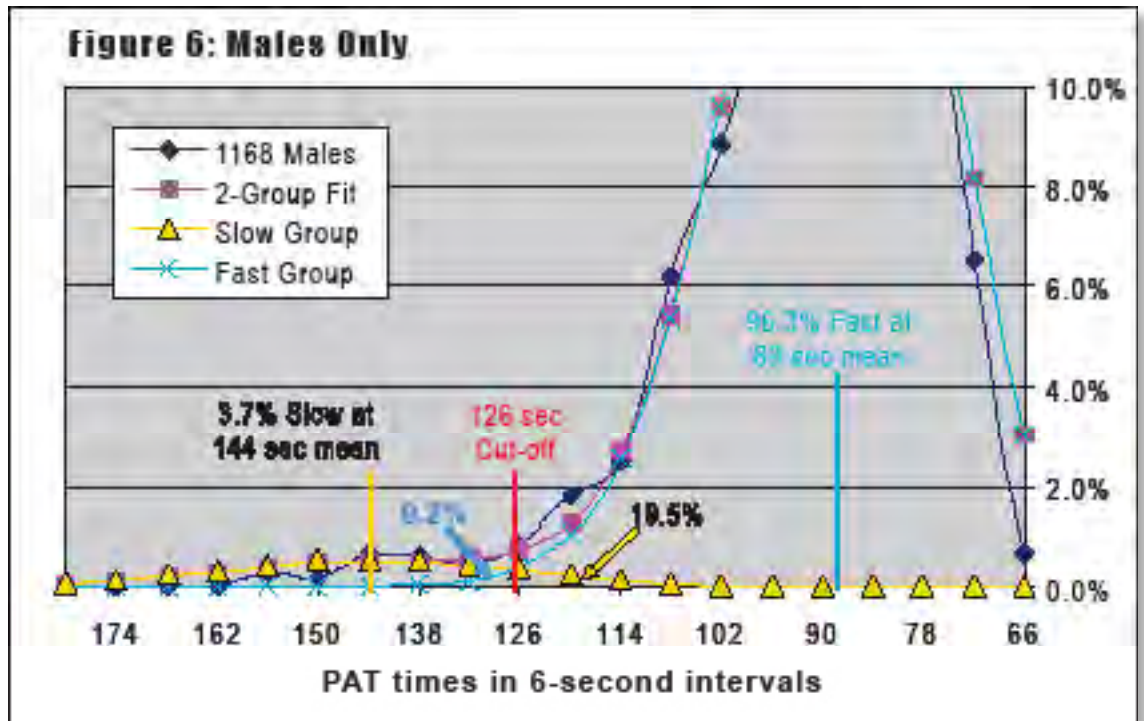
We proved in Figure 3 that at least two significantly different groups do coexist within our training environment, but it would be a mistake to proceed with this analysis without first proving that those two groups were not just “males verses females.” To do so we simply model the females separately with their own set of equations (Figure 5) and repeat the process for the males (Figure 6).

The model of best fit for females, Figure 5, puts 13.8% of the 234 females in the slow group with a mean time of 167 seconds and puts 86.2% in the fast group with a mean time of 111 seconds. The area under the light blue curve that is to the left of the red cut-off line represents the odds (11.6%) of a qualified female failing on her first attempt (a type 1 error). Conversely, the area under the yellow curve and to the right of the red cut-off line represents the odds (1.4%) of an unqualified female passing on her first attempt (a type 2 error).

The best fit for males, Figure 6, puts 3.7% of them in the slow group of 144 seconds and the remaining 96.3% in the fast group with a mean time of 89 seconds. Here the



similarity ends because the odds of a qualified male failing are only 0.2% while the odds of an unqualified male passing are 19.5%. Those probabilities are not gender neutral. They occur because the average times of both male groups are faster than their female counterparts. No matter what cut score we choose, the relative position of those groups will remain the same. Some may not like this disparity and some may



even think it unfair, but it reflects reality, and the courts have consistently held to a rule of “one standard for all.”

The rule makes sense. It is based on the proposition that the “job” has certain requirements, and anyone who cannot do those things, irrespective of gender, is not qualified for the job. The PAT is linked to the job by the JTA. The classic organizational response to this apparent conflict between the quest for diversity and the quest for fitness has been one of three options:

- adopt the favorite administrative solution of taking the teeth out of the test and letting everyone pass, or
- stand firm with the SMEs and accept a high female failure rate that invites a law suit from the failure of a qualified woman, or
- accept the attorneys’ advice to drop the PAT and settle out of court if it is already too late to avoid litigation.

Yet we instinctively know that diversity and fitness should not be incompatible goals. There are fit and unfit people in all groups, so there must be other options. The one that SCCJA took was to simply eliminate the type of

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errors that lead to sustainable law suits. They decided to quit failing qualified people of either gender! Given that goal, the task was to demonstrate a way to drive those type 1 errors so low that they become miniscule.

### The Casino Solution

There is a well known and proven way to magnify probabilities and predict outcomes. Does anyone dispute the fact that at the end of the day, the gaming casinos win? They win because of the impact of a small statistical advantage on multiple roles of the dice. There may be a few lucky patrons, but the great majority will be going home with less. The same is true for testing. A qualified candidate has a better chance of passing than an unqualified one. On any single role of the PAT dice, the outcome may be uncertain, but given multiple trials, a clear pattern emerges. All we need to do is establish a multiple remediation and retesting protocol and let the statistics play out.

As Table 1 shows, about 24 of the qualified females can be expected to fail the 126-second PAT (type 1 error) on the first test, but the number shrinks to 2.7 of them failing twice, to 0.3 failing three times, and to none failing four times. Table 1 also



shows that the 3-remedial protocol effectively eliminates type 1 errors for both females and males.

The downside of retesting is that these multiple attempts increase the cumulative odds of making type 2 errors. Because a person only has to pass once, the type 2 errors add up from 0.5 unqualified women passing on the first

**Table 1: Number of Errors by Gender and Test**

	Type 1 Errors		Type 2 Errors	
	Females	Males	Females	Males
Initial Test	23.5	2.0	0.5	3.4
Remedial 1	2.7	0.0	0.5	0.8
Remedial 2	0.3	0.0	0.5	5.5
Remedial 3	0.0	0.0	0.4	4.4
Overall Rate:				
234 Females	0.0%		0.8%	
1168 Males		0.0%		2.1%

try to a total of 1.9 after the fourth try. Similarly, 25.1 unqualified males will pass at least one of the four tries. That is still a very small overall error rate: passing fewer than 2 out of 234 unqualified females are 0.8% and 25 out of 1168 unqualified males are 2.1%.

Thus, retesting dramatically lowers the odds of failing qualified students, but it increases the odds of passing unqualified students of both genders.

We initially recommended only two remedial opportunities, but the SCCJA added a third in order to

make sure that no qualified individuals failed.

Table 2 shows all four possible outcomes for students. All 1327 of the qualified students should pass the test. Clearly there are errors: figures 5 and 6 indicate that 75 people are unqualified, but only 48 people fail the test (30 women and 18 men). Two unqualified females pass, along with 25 unqualified males, but this does not constitute disparate treatment. They are all type 2 errors; i.e., they are just the lucky winners on these rolls of the PAT dice. Thus, the test is 98% accurate, and the 2% error that does occur is biased in favor of the individual. The overall passing rate is 98% for males and 87% for the females.

**Table 2: PAT Outcomes for 1402 Students**

	Fail PAT	Pass PAT
Qualified	0 (Bad Day Bob)	1327 (Anne Ace)
Unqualified	48 (Joe Clutz)	27 (Lucky Clutz)

### Combining the Lessons

While it is essential to observe the “one standard for all” rule, it is equally important to consider the females and males separately and then combine those results. A significant improvement to the two-group model in Figure 3 comes from the combination of the data from Figures



5 and 6 to form Figure 7. Notice that while our measure of congruence is only slightly better for the four-group model (LSQ Fit = 26) than it is with the two-group model (LSQ FIT = 27), the shape of the slow group in Figure 7 is much flatter and its peak is shifted to the left.

The reason for this is that the two group model mistakenly puts a large number of the qualified females into the unqualified camp. It does so because it only has two choices and their times are closer to the slow group than the fast one. This failure is not uncommon among methods that force the equality assumption on situations that are not equal. It is often the well intentioned result of people trying to do right by remaining gender neutral while justifying their rejection of reality as conformance to the “one standard for all” rule. Because the two-group model pretends that there is no difference between typical female and male performance, it overestimates the number of unqualified at 15.0 % and falsely predicts their mean score as 128 seconds. If this were true, the 126 cut-off would allow 96% of them to pass after three retests, which suggests the need for a tougher standard and fewer retests. That would further disadvantage women far more than men, rather than reducing the gender differences.

The four-group model in Figure 7 is simply more realistic than the two-group model, so the predictions are far better. The four-group model indicates that only 5.4% of the total population is unqualified at a mean score of 154 seconds, so 64% of the unqualified will fail on four consecutive attempts (the initial test plus three retests). The odds of a qualified woman failing all four attempts are less than 1 in 6300 and lower for the men.

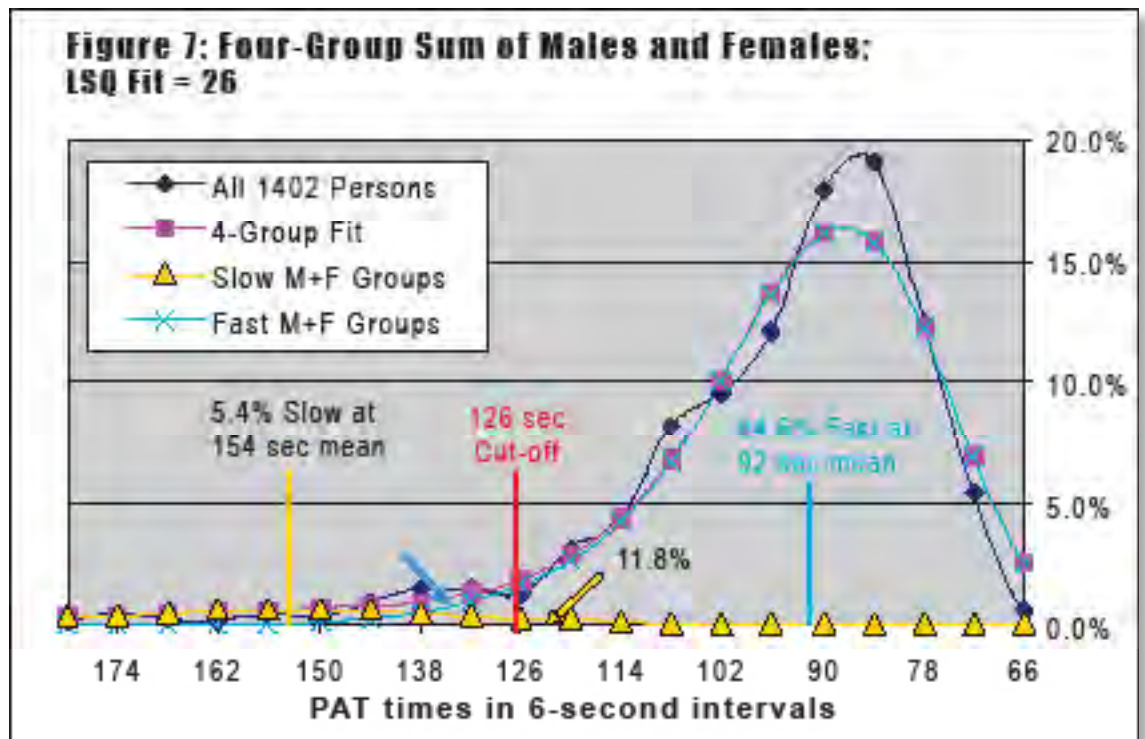
The lesson we take from this is that gender differences do sometimes exist. We need to test for them, and if present, we should form a four-group model as demonstrated above.

The key to success is realism and candor; the empirical data anchors us to reality, and we need to frankly communicate its impact to everyone involved.

### Building Support

One month after the 2005 SCCJA Measurement and Evaluation Conference, Dr. Norris and I were asked by the SCCJA administration to present our findings and recommendations to their South Carolina Law Enforcement Training Advisory Council. We made that presentation in January, 2006, and they approved the 126 second standard and a multiple retesting protocol. So that is how the SCCJA standard went from one that was too rigorous at 107 seconds, to one that was too lax at “one continuous motion,” to something that everyone could support.

In retrospect, I believe the turning point in gaining approval for the PAT actually came at the 2005 measurement conference two months earlier. Having the SCCJA administrators and legal counsel in the conference room as we discussed our results with representatives from other law enforcement organizations was invaluable. The sense of the group was that this kind of realism was the objective approach they needed. One participant even suggested showing the videos of the student performance to the court as a possible defense strategy. It could also help prospective recruits prepare before coming or delay



**The strength of the PAT ultimately lies in the willingness of the SMEs, administrators, and attorneys to communicate and work together throughout the entire process. Each group must be committed to supporting their leg of the stool.**

their application.

One of the more challenging questions asked at the conference was if I expected the recommended cut-score to change over time. The question came from their legal counsel. My answer was that it should not, because the cut-off time is tied to the difficulty of obstacles that do not require any special skills or training. Crawling, climbing stairs, running, jumping and dragging stuff are activities that nearly everyone has done at some time in his or her life. Thus, the groups found in the PAT should be reflective of the fitness levels of men and women in the society as a whole. The cut-score simply reflects an organization's relative tolerance for different types of errors. It can be set higher or lower, but for now the SCCJA is willing to error in favor of the individual and accept a few unqualified ones. The relative number of people in various groups may change, but the average times of each group should be fairly stable, especially for the qualified people in the faster groups. I did predict that the size of the slower group should decrease over time as prospective students recognize that failing the standard has real consequences.

Anecdotal data from Michelle Collins at the SCCJA indicates that students are indeed coming to the academy better prepared, and that those students who fail but follow her remedial diet and exercise program do eventually succeed. In that case, those students are actually moving out of the unfit group and into the qualified group because of a significant increase in their overall fitness levels. They pass because they should pass.

These are precisely the desired outcomes. The academy benefits by being able to tailor the training level to a more homogenous group of fit females and males rather than two groups of each. The quality of training and

operational efficiency is increased. The students benefit by being better able to carry out their duties and support their colleagues, while the society benefits by having better prepared officers responding to their needs.

### Conclusions

For decades we have done a great job at establishing content validity and a rotten one at defending criterion validity. We start with the reality that there is no perfect cut-off score and recognize that no one expects us to find one. Secondly we face the fact that this is a joint effort. The strength of the PAT ultimately lies in the willingness of the SMEs, administrators, and attorneys to communicate and work together throughout the entire process. Each group must be committed to supporting their leg of the stool. Decades of experience tell us that without all three on-board, it is absolutely pointless to start. The SMEs can validate the content and the criterion, but they can neither speak for the organization nor defend it in court.

Like life itself, we have to balance the pros and cons of setting a higher or lower cut-score, and then explain it in a way that makes sense to us, the public, and the people affected. What we have is a range of possible cut scores dependent upon the organization's and society's tolerance for different types of error. If an organization is willing to accurately assess the magnitude of each type of error, offer remediation and retesting opportunities to minimize their impact, and explain how the PAT is related to their mission, then it has clearly demonstrated good faith, diligence, and fairness. It is crucial that administrators, attorneys, and SMEs all support this reality. Finally, this analytical method can be applied to any test, not just a PAT, and it is independent of job content or the opinions of SMEs. The results are purely objective.

# Validating Physical Ability Tests

## A Successful State and Federal Collaboration

### Biographies



**Michelle Collins** is a Class One Certified South Carolina Law Enforcement officer and currently teaches Ground Defense, Oleoresin Capsicum (OC) Spray, and Driving at the South Carolina Criminal Justice Academy. She is a nationally accredited Instructor Trainer in the Pressure Point Control Techniques (PPCT) Defensive Tactics system and serves on the Board of Technique Standards and Compliance. Ms. Collins also holds a Bachelor's degree in Biology / Psychology from the University of South Carolina, and has several advanced certifications as a PR-24 instructor through Monadnock. Specializing in defensive tactics and physical training, Michelle has won the title of Ms. South Carolina in Bodybuilding and received the Best Overall Female Athlete award presented by the South Carolina Law Enforcement Officers' Association.

**Bob Fisher** is Chief of Evaluation & Analysis Division at the FLETC, Department of Homeland Security (DHS). He holds degrees in Physics, B.S., and Engineering, M.S., from the University of Tennessee, plus an MA Ed. from the George Washington University, DC. He joined the FLETC in 1996 as a Senior Training Research Analyst, with responsibility for testing and evaluation functions and later served as the Chief of the Testing, Evaluation, and Analysis Branch. He began looking into the evaluation of physical abilities in 2001 and developed the statistical processes that are presented here.

**Bill Floyd** is a twenty-four year veteran of law enforcement and currently serves as the Program Manager of the Instructional Standards and Support Section of the SCCJA. He is responsible for the development and oversight of the various job-task analyses curriculum validation processes, advanced training needs assessment development and analysis, Academy policy development, and accreditation (CALEA) coordination. Mr. Floyd also serves 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. Bill holds a B.A. degree in Psychology – General Experimental (1982) and a Master of Criminal Justice – Law Enforcement (1985) both from the University of South Carolina.

**Dr. William (Bill) Norris** is Chief of the Training Research Branch (TRB) at the FLETC and is responsible for identifying and developing innovative methodologies that impact law enforcement training. Bill received his B.S. and M.S. degrees with specialization in Exercise Science from the University of Akron, and his Ph.D. in Exercise Physiology from The Ohio State University. Dr. Norris is a subject matter expert in the area of human performance in law enforcement activities, developed the PEB2002 fitness guidelines, established an extensive database of fitness scores, and published numerous journal articles and a textbook. He is a certified Health/Fitness Director and Exercise Specialist through the American College of Sports Medicine.



# Law Enforcement Leadership Institute

By Kelly H. Yanko

with

Kathy S. Lanata & Timothy W. Turner, Ed.D.

The Law Enforcement Leadership Institute (LELI) of the Federal Law Enforcement Training Center (FLETC) was established to provide law enforcement professionals with the tools they need to develop into effective leaders. History would have us believe that great leaders are born; that they arrived on the earth knowing how to lead and motivate others. In reality, it is only after trial and error and failure that these great leaders did achieve success. Law enforcement leaders do not have the benefit of time and the natural learning process as our modern world has rapidly become an unstable and unpredictable environment. Both in our country and abroad, law enforcement leaders must enter it equipped with the knowledge and tools needed to manage themselves and lead others effectively.

LELI originated as the FLETC Management Institute in 1991 with the goal to make training relevant and universally available to Federal law enforcement managers. Through the years, the institute grew and developed into a strong leadership development venue. In 2004, the name was changed

to the Law Enforcement Leadership Institute to more accurately reflect the new philosophy and curricula -- law enforcement requires more of its leaders than to simply manage operations; it necessitates models, coaches, mentors, and leaders of people.

## What Is Leadership?

Leadership can be defined as the process by which a person influences others to accomplish an objective. Leadership is a choice, but with that choice comes an enormous responsibility. The world changed on September 11, 2001, and law enforcement has had to adapt rapidly to meet the new challenges presented by terrorism. Law enforcement is a noble profession that derives its power from the Constitution, and law enforcement leaders are held to the highest standard when using their authority to deal with these new challenges.

Specific qualities have been identified that contribute to making leaders effective leaders. The four leadership qualities or principles a leader should possess are Understanding, Ethics, Vision, and Responsibility.



**“Leadership and learning are indispensable to each other.”**

*~ John F. Kennedy*

These principles form the basis of the curricula offered by LELI.

## UNDERSTANDING

The number one asset in law enforcement is its officers.

Those officers are on the front lines every day maintaining peace and protecting freedom on the federal, state, and local levels. Though law enforcement is viewed as having to maintain a certain level of stoic professionalism, it is important for the law enforcement leader to understand that their personnel have personalities and behavioral styles that are as different as the loops, whorls, and ridges on a fingerprint. The unique training programs developed at LELI enable participants to gain a better understanding of themselves, their behavioral styles, and the behavioral styles of others. This skill allows graduates to identify which officers are better suited for particular tasks and how to help officers succeed in the field. As the world has changed, so have the backgrounds and experiences of the officers on the front line. They think and operate differently and have been brought up knowing how to challenge the establishment. The old “command and control” mentality of previous generations of law enforcement officers will simply not work with the present generation of officers. Today’s law enforcement leaders must develop cooperation, prevent and resolve conflict, and gain commitment and endorsement from their staff in order to build an effective team.

## ETHICS

Ethics has become a key word in the federal government and law enforcement is no exception. Law enforcement must maintain credibility and integrity with our communities and ethics plays an important part in that. Society depends on a few certainties, and the integrity of law enforcement cannot waver. People must know that the blanket of comfort law enforcement provides is honorable. Ethics is about making the right decision for the good of the public and the unit, and may not necessarily be a popular decision. A law enforcement leader must hold themselves and their officers and agents to the highest standards. We understand that criminals don’t play by the rules, but a leader’s challenge is that he or she must play by the rules and still be successful.

## VISION

What characteristic is it that elevates a leader from good to great? Many leaders are competent in getting the job done and done right. Great leaders, however, are able to have a vision for themselves and their unit, and gain the

**“True greatness consists in the use of a powerful understanding to enlighten oneself and others.”**

*~ Voltaire*

unit’s support in achieving the shared vision. They must have goals, both short term and long term, and a plan to reach those goals. Great leaders gain vision when they stay abreast

of current and developing technology that can benefit their team in the field. They stay current with world events and intelligence that becomes available. Vision is about anticipating events and circumstances and having a proactive approach, rather than having a reactive response.

## RESPONSIBILITY

The greatest task leaders must assume is that of responsibility. However, leadership responsibility encompasses more than just assuming responsibility for your people and their actions. Good leaders do that routinely. Great leaders foster an environment of cooperation, motivation and creativity. Law enforcement leaders must recognize that there is a mission to accomplish and take the responsibility to provide their team with the tools necessary to complete that mission. We teach that it is the leader’s responsibility to ennoble, enable, and encourage those that they lead. The effectiveness and efficiency of a unit or team is a direct reflection of the responsibility of the leader.

## Programs

The goal of LELI is to take our clients to a higher level of leadership – a level that encourages students to look outside of their paradigm, to seek new answers to today’s issues, to adapt, and move forward. We offer several different levels of training programs based upon the background and needs of the participant. The Law Enforcement Supervisors’ Leadership Training Program is designed for first-line supervisors and is based upon the skills required for that position. The training addresses competencies outlined by the Office of Personnel Management (OPM) for supervisors such as interpersonal skills, technology credibility and management, team building, problem solving, and many other identified competencies. One level up, we offer the Law Enforcement Managers’ Training Program designed for mid-level managers. Conflict management, strategic thinking, financial management, oral and written communication, decisiveness, and many other key topics are presented in this program. The Leadership Through Understanding Human Behavior Training Program is a comprehensive program designed to help law enforcement leaders develop more effective workgroups and teams.

Situational Leadership® II Training Program, developed by world renowned leadership researcher and author, Dr. Ken Blanchard, addresses the ever-changing role of the law enforcement leader and how to recognize and adapt one's leadership style to the varying skill levels of their team in order to achieve success in the field. All instructors for this training are certified by the Ken Blanchard Company. The Seven Habits of Highly Effective People® Training Program is a well recognized and highly respected program developed by Dr. Steven R. Covey. LELI has partnered with the FranklinCovey Company to offer this popular program to law enforcement professionals. All instructors are certified by the FranklinCovey Company. LELI instructors hold additional certifications in behavioral analysis and emotional intelligence.

### Leading Heroes

The driving belief behind all of LELI's programs for law enforcement leaders is: you lead heroes. The people you lead are the ones that run toward the sounds of gunfire and danger. It is these officers and agents that sometimes, tragically, make the ultimate sacrifice in the name of peace. This is why law enforcement leaders must give their very best to the people they lead. We invite you to learn more about our programs by visiting us on the web at <http://www.fletc.gov/training/programs/law-enforcement-leadership-institute>. You may also contact us at (912) 267-2988; our staff will be happy to speak with

you about any of the programs that we offer. It is our mission to provide law enforcement leaders with the very best tools available, enabling them to build an outstanding and effective team that gets results.

### Copyright » continued from page 29

#### A Creative Alternative:

An alternative to obtaining copyright permission is to create your own material. For example, the FLETC's Media Support Division (MSD) is equipped to provide licensed background music, still photos, as well as video clips or video training presentations to assist instructors in the classroom. Instructors working with the MSD's graphic artists, directors, and editors are able to recreate any scenario in order to assist in illustrating the teaching points desired. Creating your own material is a great alternative when permission from the copyright holder is disapproved or cost prohibitive.

#### Conclusion:

Copyright is a very complex area of law which directly affects training academies and their instructors. The intent of this article is twofold: First, to provide a very brief overview of current copyright law. Second, to encourage training academies to develop SOPs to help ensure uniformity among their respective instructors regarding the use of copyrighted materials. Technology has created new and dynamic possibilities for the use and presentation of information. As such, it is imperative that instructors comply with the legal requirements of Copyright.

#### References:

- <sup>i</sup> Knowles, Malcolm S. (1996). *The Modern Practice of Adult Education*. Englewood Cliffs, NJ: Prentice Hall Regents. See also: [The Learning Curve](http://library.thinkquest.org/C005704/content_hwl_learningmodalities.php3) at: [http://library.thinkquest.org/C005704/content\\_hwl\\_learningmodalities.php3](http://library.thinkquest.org/C005704/content_hwl_learningmodalities.php3); [http://www.trcc.comnet.edu/Ed\\_Resources/TASC/Training/Learning\\_Styles.htm](http://www.trcc.comnet.edu/Ed_Resources/TASC/Training/Learning_Styles.htm)
- <sup>ii</sup> Knowles, *The Modern Practice of Adult Education*.
- <sup>iii</sup> The text of this Act, and additional related materials, is downloadable at the Copyright Office Website at: <http://www.copyright.gov/>.
- <sup>iv</sup> For a complete history and listing of Copyright Act revisions, see: *Timeline: A History of Copyright in the U.S.*, at: <http://hutzley1.tripod.com/copyright/timeline.html>.
- <sup>v</sup> For additional information on Public Domain works, refer to: <http://www.copyright.gov/pr/pdomain.html>.
- <sup>vi</sup> See *Kelly v. Arriba Soft Corp.*, 336 F.3d 811 (9th Cir. 2003); See also *Los Angeles Times v. Free Republic*, 2000 U.S. Dist. LEXIS 5669 (C.D. Ca. 2000).
- <sup>vii</sup> *Copyright & Fair Use*, Stanford University Libraries, See *Obtaining Permission to Use Copyrighted Material* at: [http://fairuse.stanford.edu/stanford\\_notices.etchemendy-2003-03-copyright-reminder.html](http://fairuse.stanford.edu/stanford_notices.etchemendy-2003-03-copyright-reminder.html)

#### About the Author



Kelly Yanko has been a Training Technician with the Law Enforcement Leadership Institute for 4 years. Prior to that, Kelly got her start in government with the Transportation Security Administration Law Enforcement Training Academy. Kelly has a Bachelor of Science degree in Business from Florida State University and an Associate of Applied Science degree in Computer Information Technology from Coastal Georgia Community College.

## Accelerated Training



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