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A GLOBAL ISSUE

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VOLUME 7, ISSUE 2

Global Issues

In this issue we add an international perspective to the usual mix of law enforcement training, tactics, techniques and research covered in the Journal.

The Federal Law Enforcement Training Center's scope travels well beyond the domestic borders of the United States of America, and staff and students of Glynco and the field training sites may not realize the support FLETC provides internationally.

In fact the FLETC ranges far afield — into both hemispheres with footprints on multiple continents. The FLETC men and women share their knowledge, skills and experience with law enforcement officials worldwide. This outreach helps to foster international cooperation, forge partnerships and promotes the rule of law in ways that transcend physical borders and cultural barriers.

While politics may be local; crime, corruption, terrorism and piracy well and truly have impacts on a global scale. The FLETC remains in the vanguard training those who protect their homelands worldwide.

Mark Fallon
Assistant Director
Training Directorate
FLETC

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Photo Credits: Front and back covers, this page, and pages 19-26: Alicia Gregory, public affairs specialist, FLETC. Pages 15 and 17: Michael Del'Acqua, senior instructor, Technical Operations Division, FLETC. Front cover: scenic photo of El Savadorian moutains. This page: view from a hotel in San Salvador, El Savador. Back cover: the "Big Five" relief sculpture at ILEA Gaborone, Botswana. Originally used only by hunters, the "Big Five" refer to five of Africa's greatest wild animals—lion, leopard, elephant, buffalo and rhino.

byLines

Law Enforcement Leadership on a Global Scale

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Global Focus: International Law Enforcement Training

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Building Leadership:
The FLETC Future Leaders Program
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Let's Talk
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The New FLETC Future Leaders Program

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"Leaders aren't born, they are made."
—Vince Lombardi

Coach Lombardi's famous quote clearly supports that solid effectual leadership is critical to an organization's continued success. Recognizing that developing leaders is a smart workforce planning strategy, in 2008 the Federal Law Enforcement Training Center (FLETC) implemented a highly competitive and challenging one-year leader development program for employees just below the supervisory grades. The first-year pilot of the FLETC Future Leaders Program (FLP) concluded in March 2009 with fourteen FLETC staff members graduating from the program. This article describes several key principles upon which the FLP was designed and developed, captures unique insights into what it was like to be a participant in the pilot program, reflects thoughts on mentoring and Action Learning from graduates, and captures the impressions of an Action Learning Coach.

Federal Law Enforcement Training Center
Future Leaders
P R O G R A M

Coach Lombardi's quote that leaders can be developed reflects one core principle of the FLETC FLP. A second principle is that the organization must define what it takes to be an effective leader within that organization. If leadership matters to an organization's performance, then the focus of leader development should be to help current and future leaders reach their potential in support of the organization's strategic goals and objectives. The biggest advantage of building FLETC leadership talent internally (versus sending individuals to offsite training and development programs) is that

What It Takes to Succeed in the Future Leaders Program

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What does it take to have that triumphant victory on the day of graduation...to be able to say, "I did it!!!"? What comes to mind is the book written by C.S. Lewis entitled, "The Lion, the Witch, and the Wardrobe". How does one overcome the witch and her forces? Would I really just want to enter into the wardrobe and let life take me wherever it leads? How do I overcome all the obstacles I might meet along the way? In the next few paragraphs I will be speaking about my experience and what I saw from my colleagues in the FLETC Future Leaders Program (FLP) Pilot Class of 2008-2009.

When I applied for the FLP, I envisioned myself as one of the graduates of the FLP Pilot Class of 2008-2009. I began with the "end in mind" as Dr. Stephen Covey would say. The application process itself was not as hard for me as it might have been for other folks because I always have my resume updated and current. That took some of the "work" out of the application process and all I had to do was copy and paste. The only sections left for completion were the behavioral essay questions in the application form. I took time out for reflection to answer the essay questions. I could not have submitted my application without the approval of my first and second line supervisors.

The FLP is a journey. It is an adventure much like when you "enter the wardrobe". You have to have the "end in mind" and be committed to complete it, no matter what happens. There are a bunch of friendly forces around you who are willing to catapult you into the next leader level. Various opposing forces will come and test you. What you decide to do, how you choose to do it, and which path you choose will determine whether you'll complete the journey.

What does it take to succeed in the FLP? I think it takes a steady resolve, a resilience in the face of adversity, patience and perseverance, integrity and honesty, an excellent work ethic, faith, love and support of family and friends, teamwork and collaboration, openness, a teachable spirit, humility, vulnerability, compassion, courage, conquering our fears, an awesome sense of duty and responsibility, commitment, sacrifice, listening more, taking time for exercising reflective inquiry, being mentored by coaches, support and guidance of Action Learning project sponsors, encouragement from co-workers, support from supervisors and upper management, a passion for learning, planning, setting of priorities, willingness to change and grow, flexibility, open-mindedness, understanding others, and never giving up.

Since each of us is like a snowflake, with our own unique individuality, the percentages of each of these ingredients will vary. The Pilot Class of the FLP has successfully graduated and our leadership journey has just begun. It is my desire to leave a lasting impact and be a successful steward for generations to come by being a true servant leader.

leadership competencies are developed at multiple levels with a focus on the FLETC's strategic priorities.

The FLP builds on the foundational leadership competencies underlying the Federal government's Executive Core Qualifications (ECQs), but supplements these with specific competencies that align with FLETC's strategic business objectives and the skills required to lead effectively within our mission and the unique environment in which we function. For example, the FLETC must respond quickly as an organization to emerging training needs, whether those needs are related to standing up new, state of the art training programs; implementing new technologies in the classroom or on the range; relocating or repurposing training at our various sites; responding to unprecedented increases in training requests; integrating lessons learned in the field into our training; or building 21st Century state of the art training facilities. Our customer-driven environment requires FLETC leaders to be able to adapt quickly to changing requirements. Our leaders must be able to ask the right questions, explore the best options, and decide quickly—all the while managing multiple stakeholder interests and achieving the maximum return on financial resources.

These mission requirements suggest a certain set of key competencies, including systems thinking, critical thinking and complex problem solving, strategic thinking and strategic planning, collaborating, and working in teams across organizational lines. All of these competencies are considered fundamental underpinnings of the FLETC FLP curriculum. For the FLP to be an effective leader development program, it must focus on ensuring that participants have the skills necessary to carry out the FLETC's strategic imperatives. Leadership effectiveness is achieved through experience, and FLETC's strategic objectives determine which experiences are necessary to develop leadership competence.

A third principle of the FLP is that participants must have an opportunity to ask, "How am I doing as a leader right now?" The FLP provides direct opportunities for participants to assess their current skills and to develop plans to address their weaknesses and build on their strengths. The FLP pilot participants tested a variety of self- and 360°-assessment instruments and helped identify those instruments that provided the most benefit. The next iteration of the program will utilize the most reliable and beneficial tools to measure participants' leadership potential and to leverage that potential even further. Most importantly, the FLP self assessment process will continue to be used as a starting point for formal coaching activi-

ties. For example, participants may choose to share their assessment results with their mentor as a starting point for mentoring development. Development will continue to be "actualized" through the individual development plan (IDP), which is a key tool that is interwoven throughout the program. Assessment data provide targeted information to assist the participants in refining their IDPs, and aggregate results can help identify developmental needs across the entire class.

A fourth principle underlying the FLP is that leader development requires more than exposure to classroom training and leadership books. It requires a blended approach to learning, an energizing environment and specific activities that engage and enhance participant growth. According to some scholars, effective leader development programs must accelerate growth so that participants have "revolutionary" moments of discovery, realization and understanding, and this alone results in significant and lasting development. The FLP improves individuals by incorporating adult learning principles and the Action Learning Model, which involves a group of people working on a real problem and gaining leadership experience while doing so. Action Learning provides participants an opportunity to actually practice and develop their leadership skills and the Action Learning teams, guided by executive sponsors and experienced Action Learning coaches, work on high-impact projects involving strategic issues at the FLETC. They engage in a continuous process of learning and reflection, built around asking questions. By performing the actions required in a leadership role (i.e., working across the enterprise to assess and resolve strategic challenges), participants have learning with lasting effect. The Action Learning model is also beneficial to the FLETC because participants focus on solving real-world problems of significance to the Center.

To achieve learning within this model, it is essential that support and resources be committed and available to ensure the sustainability of the leader development process over a period of time. The mentoring component is one of the most effective means of promoting and sustaining leader development outside the classroom, on both an organizational and an individual level. On an organizational level, mentors who are current leaders within the organization help to enhance the development of specific skill sets or leadership competencies found to be critical across the organization. They also reinforce organizational values, esprit de corps and loyalty to the organization. Mentors serve as champions who not only support the program, but exemplify a personal commitment to engaging and

Getting the Most From Mentoring

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I was fortunate to participate in the FLETC Mentoring Program as a component of the Pilot FLETC Future Leaders Program (FLP). As part of the FLP, I requested as my mentor a FLETC manager with whom I had worked frequently, and whose leadership style, interpersonal skills, and broad perspective of FLETC's mission resonated with me. In addition, I believed that our mutual background in procurement would provide common ground in our mentoring relationship. I believed that she would provide unique insight that would be invaluable in my development as a FLETC Future Leader. Selecting your mentor, while important, is not the most critical factor to the success of your mentoring experience; in the end, how you cultivate the relationship is the most critical success factor. I have provided five tips to assist you in getting the most out of your mentoring relationship:

(1) Be Honest- Although it is important to know your mentor, it is also important to take the time to allow your mentor to get to know you. By identifying what you have in common with your mentor, you will strengthen the mentoring bond. Getting to know your mentor on a personal, as well as professional, level will facilitate two-way communication and increase the mentor's comfort level in providing advice. You must understand that the foundation of a good mentoring relationship is trust, which is built through honest, open communication.

(2) Be Prepared- Know what you want to discuss during mentoring meetings. By recommending 2 or 3 discussion topics prior to the scheduled meetings you will be prepared to initiate the discussion, and your mentor will be prepared to provide insight and guidance. Several topics for discussion are:

a. Discuss what you are both hoping to get out of the mentoring relationship
b. Review and confer your 360 degree assessment results
c. Relay your current responsibilities as well as profes sional goals
d. Allow your mentor an opportunity to review and discuss your resume
e. Look for opportunities to attend meetings and/or work on projects with your mentor
f. Communicate your strengths and weaknesses with your mentor
g. Verbalize your organizational challenges
h. Address your career advancement and career broadening opportunities within the organization
i. Share what inspires and interests you
j. Express your current/proposed Individual Develop ment Plan

continued on next page

(3) Be Adaptable- Schedule meetings formally with your Mentor and if necessary reschedule accordingly. You, as the individual being mentored, are responsible for initiating and rescheduling the mentoring meetings. By scheduling meetings, you will ensure that your Mentor has time set aside which is less likely to be interrupted. Lastly, respect your mentor's time. Since the best mentors are usually the busiest people—be understanding. Building a mentoring relationship takes time and does not happen overnight.

(4) Be Present- You should listen "actively" to the feed back provided by your mentor. By appreciating the fact that your mentor has a different and/or broader perspective of the organization, you will gain insight through your mentor's experiences and advice. If feedback provided by your mentor appears critical, do not take this personally. It is important that you are receptive to feedback so that your mentor feels comfortable providing guidance in the future.

(5) Be a Mentor! Consider volunteering for a mentoring position in any organization. Being a mentor can provide great personal satisfaction and act as a channel to sharpen your leadership skills. Most importantly, by being a mentor, you can help someone excel in their career.

The FLP Mentoring Program has enhanced my development as a "FLETC Future Leader" by providing a conduit for exposure and dialogue, into the broader picture of FLETC's mission. While it is tempting to be critical of the mentoring relationship in hindsight, like all relationships, the mentoring relationship requires flexibility and room for growth, change, and understanding.

assisting their protégés. Embedding a mentoring component within the leadership development process enables participants to expand their network and gather wisdom and knowledge that may or may not be readily available through other sources.

It is often noted that the most valuable asset of any organization is its people. Leader development programs can assist high performing individuals in achieving higher-level desired outcomes—both individually and organizationally. The FLETC FLP and similar programs function on the concept that leadership is a learnable skill. While difficult, time consuming and sometimes resource-intensive to enact, internal leader development programs can yield highly desirable organizational benefits: reinforcement of the organization's mission and strategic objectives; improvement in individual leadership capacity; development of opportunities for innovation and the sharing of ideas across organizational lines; and synergies around specific organizational challenges and business problems.

Read THE POWER OF ASKING GOOD QUESTIONS page 33

Federal Law Enforcement Training Center
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PROGRAM

Mentor and Protégé: A Relationship

By Michael J. Harris
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Mentor is defined as "a wise and trusted counselor or teacher", and protégé is defined as "one whose welfare, training, or career is promoted by an influential person". It is impossible to discuss "mentorship" without also discussing "protégé".

I was fortunate to be paired as a protégé with my mentor, Mr. Dan Fischer. The things that made our partnership work included 1) a similarity of backgrounds, 2) the experience and wisdom he has gained while at the FLETC, 3) his genuine interest in my development, and 4) his flexibility.

Mr. Fischer is the Senior Policy and Project Analyst for the Training Innovation and Management Directorate. We met on a regular basis (every 2 weeks at a minimum), and most of the time, we had no specific agenda. This lent itself to being able to discuss current matters freely and openly without "perceived" preparation. It also gave him the opportunity to ask me the "Five Whys" – which I think he enjoyed just a little too much. Of course, I'm joking. The premise of asking "why" five times in succession is that it helps one dig to the root of a problem rather than addressing symptoms. Try it. You may find yourself speechless by the fifth "why". I found that it often changed the direction of my focus with amazing results.

Our backgrounds are similar, which made it easy for me to see Mr. Fischer as a "wise and trusted counselor or teacher". Because we both have military backgrounds, we are able to relate well to one another. I found Dan's stories of his experiences in the civil service and his comparison of these experiences to his military life to be very familiar with some of my current challenges. His counsel in meeting these challenges was sometimes humorous, sometimes wise, and other times sobering. He seemed to have the innate ability to know how and when to apply appropriate coaching and training to each of my situations. Mr. Fischer's genuine interest in my growth, professionally and personally, was evidenced by his questioning and participation in my development. He was proactive in reviewing my personal assessments. He routinely sought to address my weaknesses, and helped me learn to play to my strengths. He zealously followed my progress and my personal participation in my Action Learning Project with my team, Team "T.R.U.S.T." When I was "slacking" off, he let me know it. When I was "on target" he gave words of praise and encouragement. Mr. Fischer even went a step further and reached out to our whole team to provide advice and counsel after a "trial balloon" presentation to the FLETC Senior Policy and Project Analysts. I cannot express enough the impact he had on me AND on my team.

More Than Just a Boat Ride

Marine Law Enforcement Training

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When thinking of spending time on a boat most people will relate it to their recreational experiences. However time spent on or around the water is certainly different for a profession as a marine law enforcement officer. In marine law enforcement training the missions and operational requirements continue to evolve, and as we move further into the 21st century those changes shape the environment that the marine law enforcement officer must cope with. Vessels are becoming capable of greater sustained speeds in deteriorating conditions thus requiring the vessel operator to process and analyze data, apply knowledge, and respond to the situation at an ever shorter time. For the modern marine law enforcement officer to cope with the additional stress requires commensurate training.

So what is involved in this commensurate Maritime Law Enforcement Training? It consists of a vast array of complexities including scientific, theoretical, and ana-

lytical knowledge bases, as well as physical requirements. The operator must be multi-talented in areas such as; the ability to speak the nautical language, marlinspike, naval engineering, naval architecture, maritime law, meteorology, oceanography, ability to conduct geometric calculations, technical prowess with electronics packages and the ability to make critical split second decisions in adverse conditions. In addition to the mental aspects, the operator must be capable of physical requirements such as the ability to determine closure rate, depth perception, color and light recognition, auditory ability to distinguish sound signals, flexibility, strength, and stamina to withstand long periods of standing, all while absorbing the shock and g-forces associated with various sea states. The Federal Law Enforcement Training Center's Marine Training Branch (MTB) accomplishes these tasks by employing various learning methodologies and strategies in the instruction of its maritime training programs.

Learning, in the conventional definition, is the process of acquiring knowledge, skills, attitudes, or values, through study, experience, or teaching. To be counted as learning, it has to lead to long-term changes in behavior potential. In other words, it has to generate new capacity for alternative behaviors of an individual in a given situation in order to achieve a goal. Through the years there have been numerous studies conducted regarding student learning. Dr. Benjamin Bloom defines the Taxonomy of Learning Domains into three types. The three types of learning include the Cognitive Domain, Affective Domain, and the Psychomotor Domain. The Cognitive Domain involves knowledge and the development of intellectual skills. The Cognitive Domain is the core-learning domain which includes the recall or recognition of specific facts, procedural patterns, and concepts that serve in the development

of intellectual abilities and skills. The other learning domains require at least some cognitive component. This is where the MTB focuses on the core curriculum items that include the scientific, theoretical and analytical requirements. It ranges from topics such as navigational rules, applying angular measurements to determine position, calculating the variables of time, speed and distance, meteorological capabilities in interpreting barometric pressure, high and low pressure systems and their affects on wave engineering. It also requires a base knowledge in Naval Architecture and Engineering, which controls buoyancy and stability, advance and transfer handling traits, and displacement characteristics.

The Affective Domain addresses attitudes, motivation, valuing what is being learned, and ultimately incorporating the values of a discipline into a way of life. This should include focusing on "real world" problems, emphasizing how the material can be applied, relating the material to the students learning goals or past experiences and encouraging the students to be resources to you and others. In the highly specialized field of marine law enforcement, it is the everyday decisions that are crucial to an officer's survival. The many natural dangers that exist in the marine environment have created a long history of fatalities among professional mariners, and an increase of violence against marine enforcement officers compounds that issue even more. We enforce the importance of reviewing past incidents in order to learn from them, but more importantly so the training moves forward. With courses in marine officer safety and survival (conducted in the pool, as well as the river), day and night boarding scenarios, and navigational exercises using the latest electronics and proven paper chart computations with a focus on returning home at the end of the watch.

The Psychomotor Domain focuses on performing sequences of motor skill activities to a specified level of accuracy, smoothness, rapidity, or force. These activities require repetitive hands-on training until the skill is learned to the point that it is an autonomic reflex and is accomplished instinctively. The MTB employs the observation-imitation-practice-adaptation strategy.

- Observation – The trainee watches the instructor demonstrate the psychomotor skill and pays attention to the steps to complete the process.
- Imitation – The trainee follows directions from the instructor as

the trainee performs the task.

- Practice – The trainee repeats the steps until all aspects become habitual (requiring little conscious effort) and the trainee can perform the process smoothly.
- Adaptation – The trainee modifies and adapts the skill to meet variables in each new and unique situation.

One of our most effective training strategies, this repetitive hands-on training provides students the opportunity to not only continue working on their motor skills of vessel handling while underway, and also allows them to apply the analytical knowledge acquired during other training strategies. This can be one of the more difficult skills in that it requires the student to feel the effects of wind, current, hull dynamics and motion and then react with the appropriate counter action.

Other learning strategies used include the application of lecture, lecture with questions, lecture-demonstration, small group discussion, recitation of oral questions by instructor answered orally by students, construction of vocabulary lists, and vocabulary drills. Students are provided with text for study and assignments, reading assignments in supplementary books, as well as, the use of diagrams, tables, graphs, and charts, exhibits and displays. Many lectures are enhanced with the use of Power Point presentations, photographs, videos, and whiteboards.

Technology is now bringing to the forefront expanded opportunities for the use of simulators in training. The U.S. Air Force and U.S. Navy pilots have been using flight simulators for decades. Although simulators are not new to the training arena, the advancements made with graphics, modeling, and capabilities have expanded its uses into driving, marine, and use of force operations.

Due to the complexities of the wide ranging knowledge required for professional marine law enforcement vessel operators, numerous training methodologies are incorporated into our training programs, and the MTB has included the use of simulators in its training. This new methodology allows students to experience decision-making opportunities in a controlled environment. The student is exposed to navigational rules exercises which include: meeting, crossing and overtaking situations, vessel lights, sound signals, and day shapes recognition in various sea conditions, lighting conditions and visibility. It allows the exploration of a wide range of aids to navigation with fully functional lights and appliances. The use of simulators as a training methodology is not intended to nor will it ever replace hands on training underway on actual vessels. Instead, it will enhance the material presented during lecture and serve to bridge the learning process from cognitive to affective and the realization in building psychomotor.

The next important step in training is measuring the level of success. The job is not just to put the information out, it is instead necessary to know that the information has been received, comprehended and retained, and that the students are capable of applying that knowledge. The MTB accomplishes this through written test and practical exercises. Using these two measurement tools allows the MTB staff to observe that the students can respond in written form on analytical information, as well as the application of that knowledge base in practical exercises, which are meant to resemble "real world" applications.

Through the use of multiple training methodologies and strategies the Federal Law Enforcement Training Center's Marine Training Branch continues to move into the 21st century providing world class marine law enforcement training while remembering the time honored traditions of training mariners. Far from a recreational day on the water, but it does enable the officer to go home to their families at the end of the day. ❑FJ

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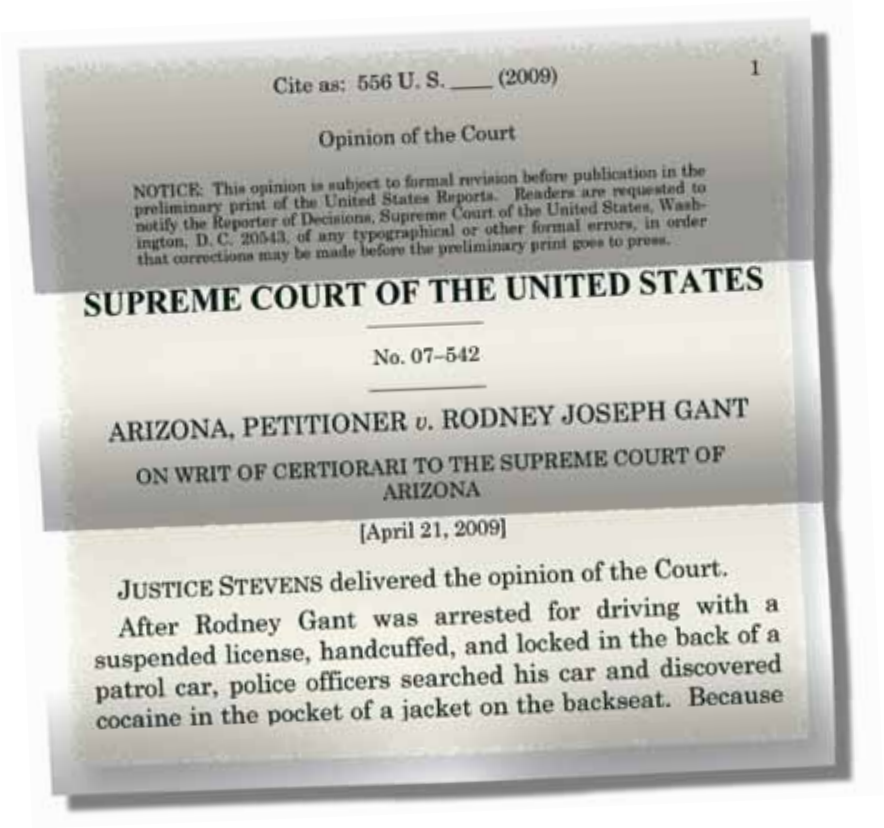
[1]Learning Domains or Bloom's Taxonomy,The Three Types of Learning http://www.nwlink.com/~donclark/hrd/bloom.html

Supreme Court Ruling



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Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 07–542

ARIZONA, PETITIONER *v.* RODNEY JOSEPH GANT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

[April 21, 2009]

JUSTICE STEVENS delivered the opinion of the Court.

After Rodney Gant was arrested for driving with a suspended license, handcuffed, and locked in the back of a patrol car, police officers searched his car and discovered cocaine in the pocket of a jacket on the backseat. Because

Arizona v. Gant

The implications for law enforcement officers

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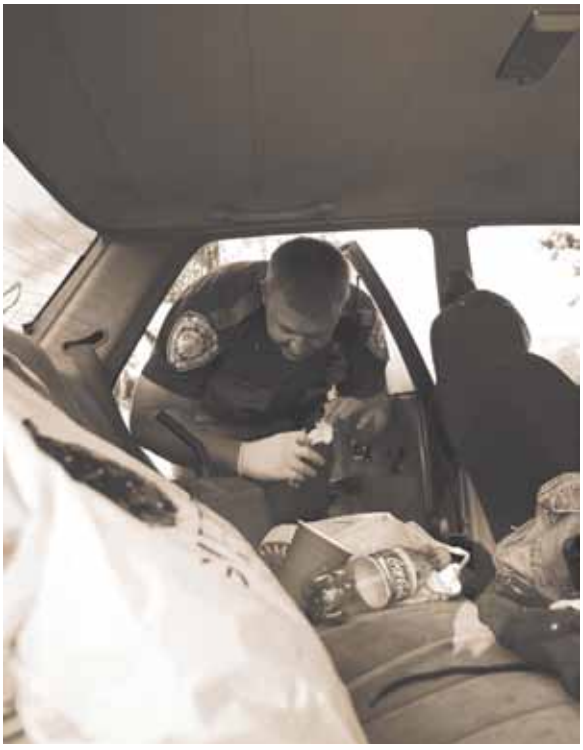


On April 21, 2009, the United States Supreme Court decided *Arizona v. Gant*, in which it defined an officer's authority to conduct a search of the passenger compartment of a vehicle after arresting an occupant or a recent occupant. The Court ruled that officers may search a vehicle incident to arrest only if (1) the arrestee is unsecured and within reaching distance of the passenger compartment when the search is conducted; or (2) it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle. This memorandum discusses the decision and its impact on law enforcement practices.

The Evolution of Searches Incident to Arrest

Chimel, Belton, and Thornton. The Supreme Court first established the search incident to arrest ("SIA") exception to the Fourth Amendment's warrant requirement in *Chimel v. California*, 395 U.S. 752 (1969). *Chimel* held that police may, incident to arrest, search the area within an arrestee's "immediate control," which is defined as the area from within which the arrestee might gain possession of a weapon or destructible evidence. The purposes of this exception are to protect arresting officers and safeguard evidence of the offense that an arrestee might conceal or destroy. In *New York v. Belton*, 453 U.S. 454 (1981), the Court was asked to determine what part of a *vehicle* officers may search incident to the arrest of one of its occupants. The *Belton* Court held that when an SIA of a vehicle is justified, the entire passenger compartment and any containers therein may be searched. This bright-line rule was created to avoid arguments about which areas inside a vehicle's passenger compartment were within an occupant's reach. In *Thornton v. U.S.,* 541 U.S. 615 (2004), the Court added that an SIA of a vehicle may be justified even if an occupant has gotten out of the vehicle, closed the door, and walked a short distance away before being arrested. The question remaining, however, was whether *Chimel*, *Belton* and *Thornton* authorized an SIA of a vehicle *regardless* of the arrestee's ability to access the passenger compartment following the arrest. *Arizona v. Gant* presented a perfect opportunity for the Court to answer that question.

***Arizona v. Gant*: The Facts and the Holding**

Shortly after parking and exiting his vehicle, Gant was arrested for driving on a suspended license. He was handcuffed and locked in a patrol car before officers searched the passenger compartment of his car and found a firearm and cocaine. In his motion to suppress the evidence, Gant argued that because it was not possible for him to access the vehicle to gain control of a weapon or evidence, the search of his vehicle was not a reasonable "search incident to arrest."

The Supreme Court agreed with Gant, emphasizing that *Chimel v. California* established the purposes and scope of searches incident to arrest. *Chimel* authorizes a search of the area from which an arrestee might gain control of a weapon or destructible evidence; it does not permit a search of areas outside the arrestee's reach. Thus, police are authorized to search the passenger compartment of a vehicle incident to arrest under *Chimel* only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search. With that said, the Court noted, "it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee's vehicle remains." In such a rare case, however, an SIA of the passenger compartment would be reasonable under the Fourth Amendment.

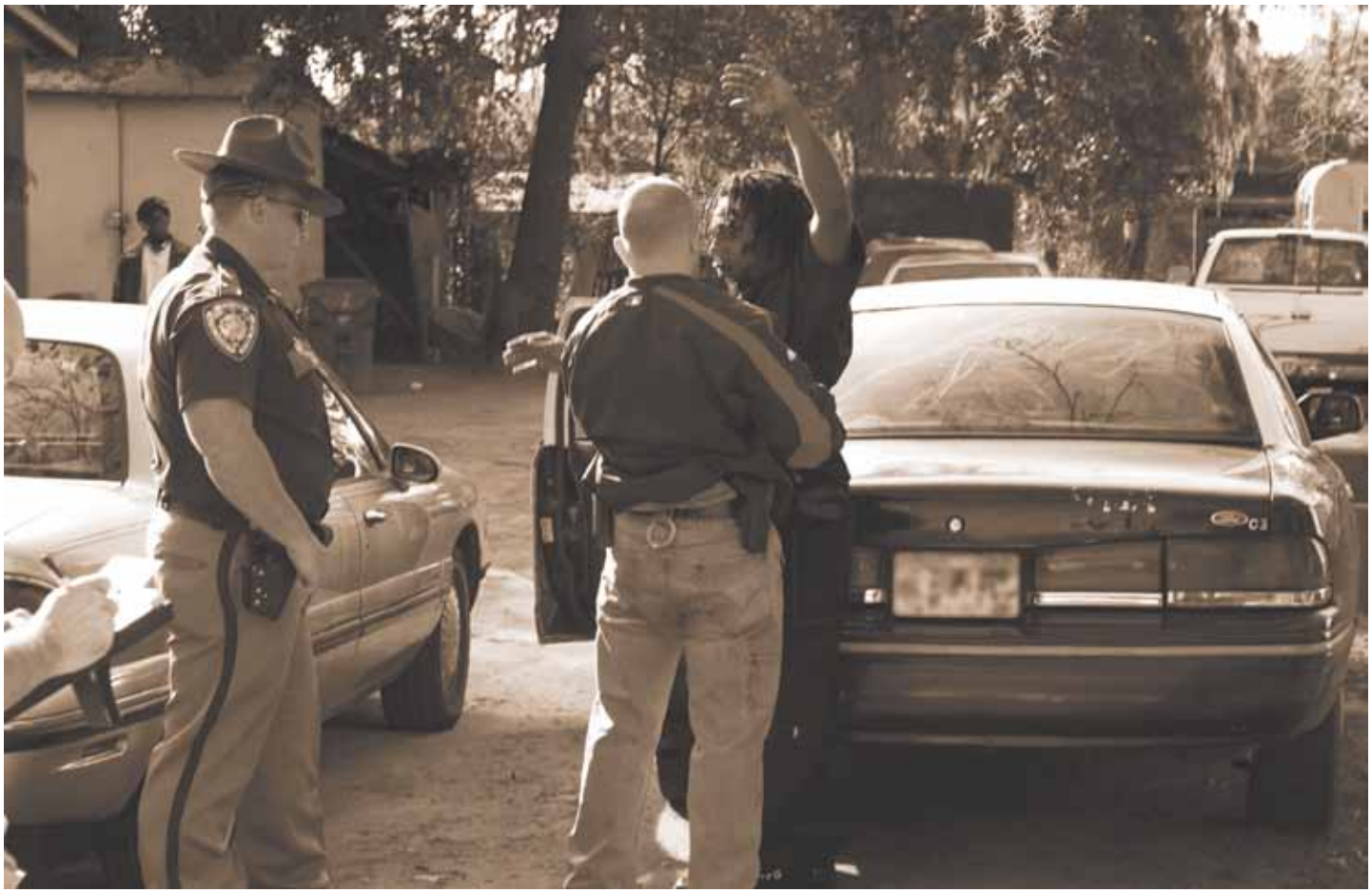
In a seeming attempt to garner Justice Scalia's deciding vote, the majority adopted an additional search incident to arrest justification entirely apart from *Chimel*. In *U.S. v. Thornton*, Justice Scalia wrote a concurring opinion in which he argued that *Chimel* should not govern searches of vehicles incident to arrest because "sensible police procedures" will always prevent the arrestee from accessing the vehicle.[2] Instead, Justice Scalia advocated broader search authority, which would allow a search of the passenger compartment whenever it is "reasonable to believe evidence relevant to the crimes of arrest might be found" therein. While his opinion did not carry the day in *Thornton*, his search justification was adopted as part of the holding in *Gant*. Therefore, in addition to searches justified by the arrestee's ability to access the vehicle, officers may also search the passenger compartment following the arrest of a recent occupant when it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle.

Reading Between the Lines: The Current State of SIAs

Gant will have an immediate impact on the day-to-day operations of law enforcement officers in the field. It is important to ascertain the effect of the Court's opinion not only on vehicle searches, but other searches incident to arrest, as well. Unfortunately, the Court left many questions unanswered. Although *Gant* does not provide explicit guidance on some of the issues below, this article makes an attempt to bring current practice in line with the Court's expressed understanding of *Chimel*, *Belton*, and *Thornton*. Of course, officers should always consult their agency legal advisors to determine how they are to apply the law of their jurisdiction in accordance with agency policy.

Searches of the Arrestee's Person: No Change

"When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. . . . In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction."[3] "Authority to search the arrestee's own person is beyond question,"[4] and this authority does



not require the officer to articulate any likelihood that weapons or evidence would be found on the arrestee.[5] A custodial arrest supported by probable cause is sufficient justification.[6]

Searches of Containers Located on the Arrestee's Person: No Change

Containers on an arrestee's person, such as a wallet[7] or a cigarette pack[8], are within the arrestee's "immediate control" for purposes of a search incident to arrest and may be opened and examined.[9] *Belton* rejected the argument that the officer's seizure of an item removes it from the arrestee's immediate control and negates the justification to search it: "[U]nder this fallacious theory no search or seizure incident to a lawful custodial arrest would ever be valid; by seizing an article even on the arrestee's person, an officer may be said to have reduced that article to his 'exclusive control.'"[10]

Searches of the "Lunging Area" or "Wingspan" Following a Non-Vehicular Arrest: Justified If Arrestee Could Access the Area at the Time of the Search

For many years there has been inconsistency among federal and state jurisdictions regarding searches of a subject's "lunging area" following a custodial arrest. In most jurisdictions, arresting officers have been permitted to search the place of arrest and containers therein even after the arrestee has been secured or removed from the area, so long as the area was within the arrestee's control *at the time of the arrest*.[11] The minority approach, however, requires some showing that the area to be searched was accessible to the arrestee *at the time of the search*.[12] Furthermore, those minority jurisdictions require that "in determining if an object is 'conceivably accessible to the arrestee,' we are to assume that 'he was neither an acrobat [nor] a Houdini.'"[13]

The *Gant* Court did not specifically address non-vehicular SIAs. The majority, however, in its examination of *Chimel*, reiterated that the scope of the SIA exception is limited to serving the purposes of "protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy."[14] Therefore, "[i]f there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply."[15] This language appears to strongly favor the minority "Houdini" analysis, which considers accessibility at the time of the search.

While the dissent attempts to restrict this interpretation of *Chimel* to arrests of "vehicle occupants and recent occupants,"[16] that does not seem to have been the majority's intent. The *Gant* Court addressed the meaning and scope of *Chimel* before undertaking any analysis of its application to vehicular searches. And rather than restricting its application, the Court reminded us that *Chimel* "continues to define the boundaries of the [SIA] exception."[17] Thus, one can make a persuasive argument that all searches incident to arrest under *Chimel* - whether of persons, places, or things - are reasonable *only* when circumstances give rise to a possibility that the arrestee might gain access to a weapon, evidence, or means of escape from the place to be searched.

Although it is unclear whether lower federal courts will begin to apply the law in this manner, officers in the field should expect the courts to begin scrutinizing their searches of an arrestee's non-vehicular lunging area incident to arrest. To prepare for such an inquiry, officers should focus on articulating the reasonableness of any such search based on the following facts and circumstances:

(1) **Distance:** The distance between the arrestee and the place to be searched;[18]
(2) **Restraints:** Whether the arrestee was handcuffed or otherwise restrained, what kind of restraints were used, and whether the arrestee was handcuffed in the front or back; [19]
(3) **Display of guns or other weapons by officers:** Whether the police had weapons drawn or pointed at the arrestee or other suspects;[20]
(4) **Positioning:** Whether the police were positioned so as to block the arrestee, suspects, and bystanders from the area to be searched;
(5) **Access:** The ease of access to the area or container itself, to include whether a container is open or closed, locked or unlocked;
(6) **Numbers:** The number of officers present versus the number of arrestees, suspects, or bystanders;
(7) **Arrestee's conduct:** Attempts made by the suspect before, during, or after the arrest to access the area to be searched.[21]
(8) **Reasonable change in circumstances:** Do police need to move the arrestee away from a dangerous environment into another private area,[22] or can police articulate a legitimate need to retrieve something such as the arrestee's shoes or clothing?[23]

Searches of a Vehicle Following Arrest of an Occupant or Recent Occupant: Two Potential Justifications

Arrestee could access the vehicle. *Gant* held that police may search a vehicle incident to arrest when the arrestee – an occupant or recent occupant of the vehicle - is unsecured and within reaching distance of the passenger compartment at the time of the search. The Court noted that "it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee's vehicle remains." In such a rare case, however, an SIA of the passenger compartment would be reasonable under the Fourth Amendment. Since this search is justified by *Chimel*, officers may search for weapons, any evidence of any crime, and means of escape.

Offense-related evidence might be in the vehicle. Even if the arrestee can no longer access the vehicle's passenger compartment, the Court held that an SIA will also be permitted "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." In many cases, such as arrests for traffic violations or outstanding arrest warrants, there will be no reasonable basis to believe that the vehicle contains relevant evidence of the crime. In other cases, however, such as arrests for possession of controlled substances, the basis of the arrest will supply an acceptable rationale for searching the arrestee's passenger compartment and any containers inside. In a case where the search is justified by the possibility of locating offense-related evidence in the vehicle, officers are limited to searching only those places in the passenger compartment where the offense-related evidence might be located.

How to define the "reasonable to believe" standard? Is it the same as probable cause, or is it something less? One must compare the search incident to arrest exception in *Gant* to another firmly established search warrant exception to find the most likely answer.

In *U.S. v. Carroll*, the Supreme Court established the mobile conveyance exception to the Fourth Amendment search warrant requirement.[24] Under this exception, an officer may search a readily mobile conveyance without a warrant upon probable cause that it contains evidence or contraband. Once this standard is met, the officer may search any area of the vehicle – to include the trunk compartment – if that area may contain

See ARIZONA VS GANT page 39

From left: former ILEA Botswana Director Stan Moran, former FLETC Associate Director for Washington Operations John Dooher, FLETC Director Connie Patrick, Senior Assistant Commissioner of the Botswanan Police James Duha, and FLETC Chief of Staff Jane Titus at ILEA Botswana.

International Law Enforcement Training

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Speaking before the United Nations General Assembly at its 50th Anniversary on October 22, 1995, then-President Clinton called for the establishment of a network of International Law Enforcement Academies (ILEAs) throughout the world to combat international drug trafficking, criminality, and terrorism through strengthened international cooperation.

Now, years later, the United States and participating nations have moved ahead with the establishment of ILEAs to serve four regions: Europe, Africa, South America and Asia. The first International Law Enforcement Academy (ILEA) opened in Budapest in 1995. Additional ILEAs were established in Bangkok in 1999, Gaborone in 2001 and San Salvador in 2005. An advanced training ILEA was established in Roswell, NM, in 2001 and a Regional Training Center conducting primarily specialized programs began operations in Lima in 2005.

The Departments of State, Justice and Treasury established the ILEA Policy Board and it is comprised of senior representatives from their respective organizations. The Department of Homeland Security is now a member

and also has a senior representative on the Policy Board. The Policy Board's primary goal is to monitor and provide guidance and oversight for the ILEA training program to ensure that it is consistent with foreign policy and law enforcement goals. Policy Board members are also responsible for approving and appointing the ILEA Directors and Deputy Directors.

Functional level oversight of the ILEAs is provided by the ILEA Interagency Steering Group. This group is composed of representatives from agencies under each of the Departments that comprise the Policy Board as well as representatives from sub-agencies and other organizations that provide expertise and assistance to the ILEAs. The Policy Board meets bi-monthly and is chaired by officers from the State Department's Bureau of International Narcotic and Law Enforcement (INL).

The ILEA Directors report to the Policy Board through the Steering Group. The Deputy Directors report to and receive guidance from their respective Directors and the Steering Group. Advice and support for the ILEAs are also encouraged from the Chiefs of Mission at the U.S. Embassies in the host countries. The Director and Deputy are charged with keeping the Chief of Mission fully informed of all activities and operations of the ILEA in accordance with NSDD 38 requirements.

The Department of State funds most of the training at the ILEA through the Bureau for International Narcotics and Law Enforcement (INL). Some specialized courses are funded by other United States Government (USG) agencies and/or foreign governments.

The ILEAs have no resident faculty and only a small administrative staff comprised of one U.S. Director, one or two U.S. Deputy Directors, and host country nationals. The host country nationals may be civilians employed directly by the ILEA or members of the host government seconded to the ILEA. The U.S. Director and Deputy Director(s) of the ILEAs are members of the Embassy Country Team and receive personnel and logistical support from the Embassy. In addition to US law enforcement instructors, Australia, Hungary, Thailand, Botswana, Japan, Hong Kong, Holland, Ireland, Germany, Italy, Great Britain, Canada, Russia, INTERPOL and the Council of Europe have also provided instructors.

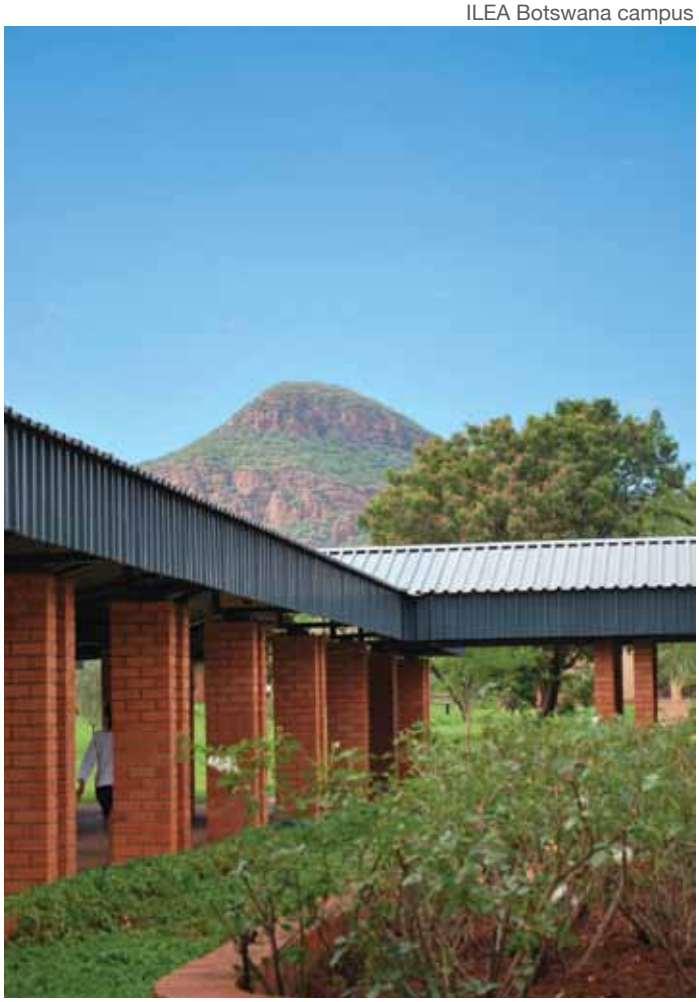
The mission of the ILEAs is to support emerging democracies, help protect U.S. interests through international cooperation and to promote social, political and economic stability by combating crime. To achieve these goals, ILEA provides high-quality training and technical assistance, supports institution building and enforcement capability and fosters relationships of American law enforcement agencies with their counterparts in each region. The ILEA program also encourages strong partnerships among regional countries, to enable these countries to address common problems associated with criminal activity.

ILEA Botswana campus courtyard

The ILEAs serve a broad range of foreign policy and law enforcement purposes for the United States and for the world. In addition to helping protect American citizens and businesses through strengthened international cooperation against crime, the ILEAs' mission is to buttress democratic governance through the rule of law; enhance the functioning of free markets through improved legislation and law enforcement; and increase social, political, and economic stability by combating narcotics trafficking and crime.

The ILEA concept and philosophy creates a united

ILEA Botswana campus



effort by all of the participants — government agencies and ministries, trainers, managers, and students alike — to achieve the common foreign policy goal of international law enforcement. The ILEAs utilize an ideal blend of professionals to strengthen the rule of law, human dignity, personal safety and global security now and in the future.

For more information about the ILEAs, visit the FLETC website at www.fletc.gov.

ILEA Gaborone

The Federal Law Enforcement Training Center became involved in international training with the opening of the first International Law Enforcement Academy (ILEA) in Budapest, Hungary, in 1995. The FLETC was more than happy to assist when the decision to establish an ILEA in southern Africa was made in 1998.

The ILEA Policy Board proposed creation of an ILEA that would focus on enhancing the effectiveness of regional cooperation against the principal transnational criminal trends in Africa - illicit drug trafficking, financial crimes, terrorism and alien smuggling. Although several countries were considered, Botswana was chosen as the site for ILEA Africa. The government of the United States and the government of Botswana entered into negotiations in 1999 to establish an ILEA in Gaborone. FLETC is assigned managerial oversight of the ILEA.

The mission of the ILEA is to provide training for middle managers in the criminal justice fields. Initially, the staff trained students from 12 Southern African Development Community (SADC) member countries. Currently, 29 sub-Saharan countries participate in the ILEA's programs.

ILEA Gaborone is headed by a program director and two deputy program directors who are appointed and funded by the United States, and a managing director and deputy managing director who are appointed and funded by the Government of Botswana.

James Duha was the most recent managing director of the ILEA. The Senior Assistant Commissioner of the Botswanan Police has been involved with the ILEA since 2002. Through his work with the ILEA, Botswana has increased its sphere of influence within Africa. The Botswanan Managing Director is half of the ILEA's leadership, while the other half is maintained by the U.S. appointees.

Currently, Stan Moran is the program director of ILEA Gaborone. He accepted the position in 2006, replacing Seymour Jones, who currently serves as the Deputy Assistant Director for FLETC's State and Local Training. The Georgia native brings not only his 30-years of law enforcement experience to the post, but also his extensive experience in the training arena to this operation.

"I held 10 different positions at FLETC, and I was able to discover a great deal from each assignment," explained Moran. "That experience gave me confidence when I accepted the position here, but I have learned so much from being the Director of ILEA Gaborone."

Part of this learning included Moran immersing himself in the culture of the African people. He explained it was his professional relationships with the representatives of the many countries and his counterparts in the Embassy, along with his personal relationships within the community and as a church member, which have earned

The ILEAs serve a broad range of foreign policy and law enforcement purposes

him the respect of these people.

"I realized that the culture here is different than in the United States," said Moran. "Things take time, and there are many political considerations. I had to learn to be more patient and earn the respect and trust of my counterparts."

The challenge of working in the international setting is building and maintaining not only the relationships between the ILEA and the African countries, but also between the countries themselves. The students come from high-ranking positions within their country's law enforcement community. Obtaining the certificate from the ILEA is prized by attendees, so the classes stay filled.

The core curriculum of ILEA Gaborone operates using the same model as the other ILEAs, providing courses on a wide range of law enforcement skills -- counter-terrorism, forensics, basic case management, fighting organized crime, supervisory police training, police strategy, narcotics identification and evidence handling, customs interdiction, document fraud, illegal immigration and public corruption, among others. Currently, ILEA Gaborone conducts four six-week Law Enforcement Executive Development (LEED) programs per year and approximately fifteen specialized courses – lasting one to two weeks – in a variety

Scenic view of El Savadorian mountains

of criminal justice topics. Participants are nominated by all eligible African countries. The most recent LEED program included students from Botswana, Lesotho, Namibia, and Swaziland.

The courses are taught by a variety of U.S. Federal law enforcement agencies, non-governmental organizations, and the international law enforcement community. The instructors and class coordinators build a bond with the students that transcends the six-week training period. The relationships built throughout the program encourage continuing associations of trust and mutual respect. The ILEA maintains an ever expanding of alumni and engages in several activities to ensure that alumni obtain the maximum benefit from their training.

The academy is approximately 25 miles south of the city of Gaborone on the grounds of the Botswana National Police College. In addition to administrative offices, there are several classrooms, a computer lab, and office space for instructors. Dormitory and recreation facilities are also on the site for course participants. Although the state-of-the-art campus did not open until 2003, the academy offered courses using local conference facilities while under construction. Proposed projects include an explosives range and dining facility.

Programs range from Anti-Gangs Training to Trafficking in Persons

Training at ILEA San Salvador

"For eight years, ILEA Gaborone has provided a nexus between comprehensive training and operational excellence. This academy is dedicated to ensuring cross border information sharing and operational collaboration among law enforcement organizations of Sub-Saharan Africa," said FLETC Director Connie Patrick. "At its core, ILEA Gaborone has been, and is, an example to the world how partnerships can work to make a difference in the fight against transnational crime and terrorism."

ILEA San Salvador

For decades, law enforcement professionals have been fighting a war against the Latin American drug cartels, whose leaders have left crime and violence in their wake. The International Law Enforcement Academy (ILEA) San Salvador is a partner in this fight through providing quality training to the law enforcement communities in Mexico, Central America, South America, and the Caribbean. Among the many different programs, the ILEA addresses the problems of narcotics and organized crime in this vital region of the world, as well as other law and democracy issues.

The Federal Law Enforcement Training Center (FLETC) has management oversight of the ILEA San Salvador. The ILEA operates jointly with leadership and staff from both the Salvadoran Ministry of Government and the U.S. Government.

The ILEA Director, Javier Jaquez, has a long history with this academy in San Salvador. Prior to his selection as the Director, he served as the ILEA's deputy direc-

Training Specialist Chuck Fiese has coordinated several programs at the ILEAs, including the programs at ILEA San Salvador.

tor. Although Jaquez is an active special agent for the Drug Enforcement Administration (DEA), he works for the FLETC through a memorandum of understanding between the two federal agencies. This cooperative spirit is what the ILEA mission is built upon.

DHS and the Departments of Justice, State, and Treasury established the academies on a regional basis across the world. In May of 1997, former President Clinton along with the presidents of the Dominican Republic and five Central American countries agreed on establishing an International Law Enforcement Academy for all of Latin America and the Caribbean. The ILEA San Salvador was officially established when U.S. Ambassador Douglas Barclay and Salvadoran Minister of Justice and Security Rene Figueroa ratified a bilateral agreement in November 2006.

"The first class was actually taught before the official ILEA establishment," said Jaquez. "The regional law enforcement community was very interested in attending the training we had to offer."

The ILEA offers two types of courses: the law enforcement management development program and specialized programs. The academy holds an average of 20 training programs a year, ranging from Anti-Gangs Training to Trafficking in Persons, for mid-level managers in police departments, prosecutors, court judges, and other officials who work in the field of criminal justice. The ILEA has conducted 11 six-week core programs and 34 specialized programs in the region thus far. Participants share their experiences and develop joint strategies and initiatives that will have a real impact on important regional criminal jus-

FLETC Director Connie Patrick stands with Delmer Edmundo Rodriguez Cruz, El Salvador Viceminister of Public Security and Justice; Dominican Republic Ambassador Roberto Victoria, and an ILEA student from the Dominican Republic during the ILEA LEMDP-11 graduation ceremony, March 6.

tice problems. The most recent program graduated 30 law enforcement professionals from Guatemala, the Dominican Republic, and El Salvador, but since its official inception in November 2006, ILEA San Salvador attendees have come from 29 different countries throughout the western hemisphere.

Instructors are chosen among several U.S. federal agencies including the Secret Service, Customs and Border Protection, DEA, ATF, and the State Department among others who are experts in their fields. A number of law enforcement agencies within the participating nations also provide instructors.

Currently, ILEA San Salvador operates from two government-run (National Academy for Security Police) facilities. The facilities are located in Comalapa – near the international airport – and Santa Tecla, a small community in the outskirts of San Salvador. Renovations have been completed in these temporary locations to conduct the various training initiatives until a permanent facility is built. The Government of El Salvador has designated a twelve-acre plot of land near the Ministry of Foreign Affairs to erect a new building to serve as the permanent site of the ILEA. Preliminary design work for a new building is in progress and the construction project is expected to be completed – funding permitting - in about two to three years.

"Soon a facility will stand here, serving as the new ILEA venue for criminal justice training in this region," said FLETC Director Connie Patrick, during the ceremony officially announcing the construction project. "This facility is where future law enforcement and criminal justice professionals from multiple countries will learn together and forge relationships that will last throughout their careers. The ILEA San Salvador facility will beckon other countries to come and join together in the fight against transnational crime and terrorism."

According to Jaquez, the networking that occurs during the training is as important as the training itself. "More international investigations have succeeded due to the relationships established at initiatives like this," said the ILEA Director.

"Among other law enforcement issues, the ILEA San Salvador is training law enforcement professionals from the many Latin American countries combating the drug cartels which are supplying the drugs moving across our nation's southwest border," said FLETC Director Connie Patrick. "The drug cartels have formed formidable alliances within their own countries and between countries and nations in their region, and our training provides the tools to the law enforcement professionals in these front-line countries to form their own alliances to combat the criminal activity."

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Law Enforcement Leadership on a Global Scale

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The Law Enforcement Leadership Institute (LELI), a training entity of the Federal Law Enforcement Training Center (FLETC), functions in primary support of the Department of Homeland Security Strategic Goal #2 "….coordinate training and education across multiple levels both national and international….". LELI also supports the DHS mission by ensuring that the future successes of the Partner Organizations are optimized by the lessons learned at the FLETC.

How is this achieved? While the primary mission of the FLETC is to provide basic law enforcement training, LELI increases leadership impact and influence by facilitating an understanding of human behavior that brings out the best in *every level* of law enforcement. This understanding of behavioral science is behind the tangible actions that improve individual skills and habits as a leader. It also provides the tools necessary to create high morale and achieve extraordinary results.[1]

Just as the demand for basic training at the FLETC has increased, LELI has also been inundated with requests for leadership training both domestically and abroad. LELI has responded by entering into some new partnerships with other law enforcement organizations and providing a Train the Trainer Leadership course which has become a centerpiece method to facilitate this increased demand.

However, developing additional law enforcement leaders as trainers is not simply a service that assists other law enforcement departments. It is also a force multiplier for the FLETC and the Partner Organizations. Also, since these leaders come from Federal, state, local, tribal, and international law enforcement agencies, they bring to the LELI a wealth of law enforcement experience that expands our own paradigms and provides additional filters so that the LELI can better understand law enforcement leadership on an even greater scale. In law enforcement as in life, everything depends on the lenses through which we view the world. By developing new partnerships and putting on new lenses, we can see things that would otherwise be invisible.[2]

In addition, these new leadership instructors have provided LELI current successful law enforcement case

studies that will be used to augment the next generation of LELI training currently under development.

Who are some of the new partners for the Law Enforcement Leadership Institute? LELI has been working jointly with the Office of State and Local Training and the International Training and Technical Assistance Division to identify every possible opportunity to implement training and force multiplier strategies to combat crime and terrorism on a global scale.

Domestically, the Jacksonville Sheriff's Office (JSO) has partnered with LELI to develop their own leadership training modeled after LELI for their command staff as well as their rank and file. In fact, JSO now has a cadre of instructors who have been certified to teach leadership programs developed by LELI. JSO is using their newly certified instructors to integrate leadership training into their own Academy where they will not only share these values and behaviors with the staff of the JSO, but also to reach state and local leaders from throughout Florida. Combining an understanding of the science of human behavior with real-life command experience, JSO leaders will also share their expertise and be used to team teach certain leadership topics with LELI's experienced instructors when appropriate at the FLETC.

Internationally, LELI has supported law enforcement leadership development around the world. Several times a year, the LELI provides various types of leadership instruction at the International Law Enforcement Academies (ILEA's) in Budapest, Gaborone, and San Salvador. New supervisors from more than seventy-five countries participate and receive training at these ILEA's.

In fact, much of what DHS does to protect the United States begins overseas and requires us to develop close partnerships with our foreign counterparts and to establish cooperative activities with our allies. FLETC's international engagement with our law enforcement partners for training such as this provides capacity building as a means to address many security issues before they threaten the U.S. Training is a cost effective and lasting force multiplier for U.S. efforts in combating crime and terrorism. Whether we are interdicting arms or drug shipments, breaking up a human trafficking operation, or penetrating and dismantling a terrorist cell, it all comes about in today's global crime environment through international cooperation. This puts FLETC's training activities both at home and abroad on the frontline of our nation's security.

The international reach of LELI has now extended beyond the ILEA's. For example, LELI provided leadership training to the United Nations components located in The Hague, targeting the security forces for The International Crime Commission and Criminal Court; The Nuclear, Chemical and Biological Weapons Court, and The War Crimes Tribunal. The decisions and actions of this international body of law is of great importance to global security, and it was an honor for the FLETC to provide this leadership training to their security forces. Clearly, this benefited the Department and provides a return on investment for Homeland Security.

The reputation of the FLETC leadership training programs continues to spread internationally. Recently, Romanian law enforcement executives and the American Embassy in Bucharest requested FLETC to train the entire country's law enforcement leadership staff. Obviously, due to other priorities and operational needs of the FLETC it would be impossible for LELI to dedicate enough time to provide training to that many foreign officials. Instead, what LELI did was to provide its Leadership Train the Trainer course to those selected by the American Embassy as the best Romanian leaders who possessed potential leadership teaching skills.

The ILEA in Budapest hosted this event and for the first time in their 14-year history. Two specialized leadership train-the-trainer courses were conducted in Budapest for participants from Romania and Hungary. According to ILEA Budapest Director Penny Hoback, ILEA training has both immediate and long term positive effects. Understandably, those trained at the ILEA become better investigators when exposed to modern law enforcement practices. The goodwill and camaraderie developed as a result of this training also yields better connectivity between countries and enhanced cooperation against international crime organizations. Finally, those trained at the ILEA continue to move into the higher ranks of their respective countries, including some at the policy making and ministerial level which ensures global partnerships for the future. These are tremendous benefits then to the FLETC and more importantly to its Partner Organizations, especially those with foreign offices or working international investigations.

Some of the core leadership tools utilized by LELI in this newly developed Leadership Train the Trainer program are the demonstration and teaching of "Observable Behavior" as exhibited in the DISC model, and "Paradigms," otherwise known as values. The behavioral insight provided by the DISC measurement tool identifies four basic behavioral categories: Dominance, Influencing, Steadiness and Compliance. Participants of this DISC training have learned that

See LEADERSHIP page 38

Law Enforcement and Critical Infrastructure

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Critical infrastructure protection has become a phrase that is very familiar across law enforcement in recent years; however, less than a decade ago it was a foreign language for many public safety agencies. Since 9/11 our country has undergone a dramatic realignment of priorities and concerns to the protection of our communities and our nation as a whole. In 2003, the Department of Homeland Security was established and with it was born a new set of requirements and priorities. One major one was the protection of critical infrastructure. Still today, six years after the founding of Homeland Security, many law enforcement agencies are trying to establish and align their assets and resources to accomplish this important mission. Federal, State and Local law enforcement are battling with how to protect something that they do not own. An additional difficulty is that the facility may be essential to their public safety mission, their community, or the nation, yet they have no direct control of its operation and protection. Law enforcement personnel are often left with more questions than answers such as: Who is responsible for protecting critical infrastructure facilities? How do we develop partnerships with private sector owners and operators for the protection of the facilities? And where do we turn to train our officers to accomplish this new and evolving mission?

When it comes to critical infrastructure key resource (CI/KR) protection, Homeland Security Presidential Directive

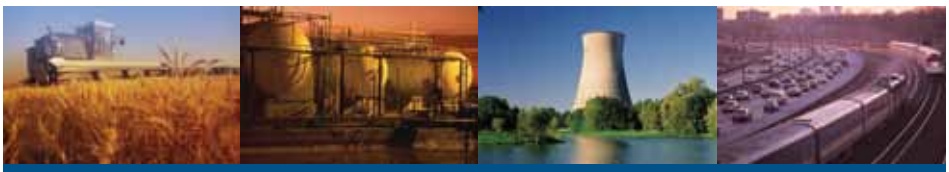
HSPD-7 clearly defines the overall mission and areas of responsibility for Federal Executive agencies, but it is merely an outline for the overall mission plan. The purpose of the directive is "to establish a national policy for Federal departments and agencies to identify and prioritize United States critical infrastructure and key resources and to protect them from terrorist attacks".[1] It also outlines the roles and responsibilities for the Federal Sector-Specific Agencies (SSAs), as well as other departments, agencies, and offices.

The Secretary of Homeland Security recognized "that each infrastructure sector possesses its own unique characteristics and operating models",[2] therefore they would be best suited to identify what areas need protection. This seems like a simple task doesn't it? Each Sector can take care of their areas of responsibility, right?

HSPD-7 clearly defines who is responsible, but how they are to protect it is a totally different issue. Sectors have direction and the federal agencies have direction, but where is the guidance for the state and local law enforcement? At a majority of the critical infrastructure facilities around the country, state and local law enforcement will be the first responders to the scene.

Often there can be a disconnect or a gap between the Federal agencies, the state and local law enforcement, and the private sector owner and operators. Sectors and agencies need to grasp the complexities involved in the cross sector interdependencies and dependencies. Sectors cannot operate independently of each other. They have to rely on each other and take a pro-active posture in order to make the protection of the infrastructure critical to our nation to make it safer, more redundant, and more resilient.

Sectors put together Sector Specific Plans (SSPs) as guidelines to assist sectors in forging a path or partnership between agencies, state, local, and private sector entities. Agencies therefore set forth policies based on HSPD-7 and endeavor to secure the assets under their jurisdiction. These partnerships are the cornerstones of a good CI/KR program.



CIKRTP Program

Mission

To establish a reference point and standard of performance for federal employees by providing common references, processes and tools to facilitate consistency within the federal community charged with CI/KR protection.

Source: CIKRPQTP CDC Notes & Overview, Nov 6-9, 2006; pg 1, para 5

LAW ENFORCEMENT RESPONSIBILITY

On the regional level, local law enforcement has the responsibility of protecting or augmenting the protection of the infrastructure within their jurisdiction. Traditionally they are the first responders to all kinds of situations, to include parking violations, lost children, vehicle accidents, terrorist attacks, and natural disasters.

Therefore, law enforcement must be well versed in preparedness, response, mitigation, and recovery. First responders are our first line of defense. They are the ones who are the boots on the ground. Law enforcement is responsible for understanding a diverse amount of information. Not only understanding the information they receive, but disseminating the proper information to the proper recipients.

This can be challenging, because there may be a powerful cultural disincentive to sharing information. This has gradually changed over the years and has increased as we have made efforts to share information between entities. Information is not concentrated on just one sector, but it may cross some or all of the sectors. Law enforcement is not only responsible for the Emergency Services sector, but they cross over, respond to, and/or need to have an understanding of all 17 soon to be 18 sectors (Critical Manufacturing sector), depending on what sectors they have within their jurisdiction.

Having an understanding of CI/KR protection can assist law enforcement in ensuring better communication, teamwork, utilization of resources during a crisis incident, awareness training for employees, and information sharing between stakeholders within a CI/KR community. Better communication between law enforcement and private sector stakeholders will leverage the objectives set forth in the National Incident Management System (NIMS) and the National Response Framework (NRF). Communication is the key that will open the doors to many opportunities.

These are opportunities to train and practice skills in multiple venues in which you will one day respond. Utilizing partnerships within your community can increase your coverage ten to one hundred fold by awareness training and buy-in from your CI/KR community. Law enforcement must take a pro-active posture in addressing CI/KR protection.

You cannot just wait until a natural disaster, a terrorist attack, or a critical incident happens to start planning. You must have plans in place so that when it does happen you will be ready. The plans must be written, tested (through tabletop exercises and then actual scenario based exercises), and trained so it is not just some nice looking book sitting on someone's shelf that no-one has read. It must be read, tested, and trained to be retained and become second nature.

BRIDGING THE GAP

The Federal Law Enforcement Training Center (FLETC) serves as an interagency law enforcement training organization for more than 88 Federal agencies. The Center also provides services to State, Local, Tribal, and International law enforcement agencies.

The FLETC offers many courses covering a wide variety of basic and advanced law enforcement topics. In the area of CI/KR, the FLETC offers two courses that aid in bridging the gap between law enforcement and CI/KR protection. The main objective and goal in creating these courses was to standardize and set baseline training within the realm of the CI/KR world.

Standardized, baseline training is what is needed across the board so that everyone is on the same page and speaking the same language. The

FLETC is filling the gap and meeting that vital need. Most CI/KR programs offer portions of CI/KR training such as vulnerability assessment methodologies or CI/KR laws. The FLETC has the only standardized CI/KR program based upon the National Infrastructure Protection Plan (NIPP), offering a complete overview of CI/KR protection from the national level down to the State and Local levels.

With this in mind, the FLETC offers courses for the federal, state, local, tribal, territorial, and international agencies with CI/KR protection responsibilities and private sector owners and operators of CI/KR. The Critical Infrastructure Protection Training Program (CIPTP) is a one-week manager's level course, and the Critical Infrastructure Key Resource Training Program (CIKRTP) is a two week practitioner's level course.

CIPTP

This course, which is intended for the CI/KR manager, assists the students in understanding how infrastructure impacts their mission and the importance of building resiliency and redundancy into their security plan. The goal of the course is to equip them to better understand how to protect the infrastructure critical to their mission. The CIPTP course will enhance their current CI/KR program or can facilitate the creation of a new one.

The CIPTP course covers the guiding documents set forth by our national policy, the commonalities found in vulnerability assessment methodologies, physical and computer security, interdependencies and dependencies, and the importance of partnership models and information sharing.

CIKRTP

This course is intended for CI/KR practitioners and those that are fully immersed in CI/KR duties. It is designed to establish a reference point and standard of performance for federal employees by providing common references, processes, and tools to facilitate consistency within the federal community charged with CI/KR protection.

The target audience for this course is the security specialists, program managers, inspectors, investigators, and officers charged with the National Infrastructure Protection Plan (NIPP) implementation, compliance, and information sharing.

In accordance with HSPD-7 paragraph 14, the Secretary of Homeland Security will establish uniform policies, approaches, guidelines, and methodologies for integrating Federal infrastructure protection and risk management activities within and across sectors along with metrics and criteria for related programs and activities.

This course will walk the student step-by-step through the NIPP's Risk Management framework (RMF); define consequence, vulnerability, and threat; and discuss the importance of each. It will also look at different assessment methodologies, review the laws and policies that guide CI/KR policy, discuss the Sector Specific Plans (SSPs) interdependencies and dependencies, and the importance of partnership models and information sharing. This course includes a written test and a practical exercise reiterating the principles that were taught during the course of the program. ❑FJ

More information about these courses, contact:
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Kyle Barrington, program coordinator/senior instructor: kyle.barrington@dhs.gov

[1]Homeland Security Presidential Directive/HSPD-7. (18). December 17, 2003. http://www.whitehouse.gov/news/releases/2003/12/20031217-5.html

[2]Homeland Security Presidential Directive/HSPD-7. (18). December 17, 2003. http://www.whitehouse.gov/news/releases/2003/12/20031217-5.html

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Federal Law Enforcement Training Center
Future Leaders
PROGRAM

The Power of Asking Good Questions

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When trying to solve a problem, a typical strategy is to put together a group to identify the nature of the problem and suggest possible solutions. The makeup of the group and the approach the group takes to resolve the problem can have a dramatic effect on the outcome. The Action Learning component of the Pilot FLETC Future Leaders Program incorporated teams composed of diverse members, from different divisions and directorates, and with different viewpoints. The integral component of the Action Learning process and the key to the success of this approach was to develop the ability of the group to ask good questions.

Learning to ask good questions enhanced and advanced our knowledge and provided us with possible solutions to problems and an opportunity to learn. In Action Learning, our group's goal was to ask good or even "great questions". This was difficult at first, almost counter intuitive, since most of us relied on statements as our approach to problem solving. We learned that asking a good question creates an opportunity for reflection and with reflection comes an opportunity to observe, analyze and challenge basic assumptions. Most importantly, we discovered that asking good reflective questions can lead a group into a dialogue rather than into a debate. These dialogues created a greater understanding between the group members, led to increased learning through inquiry and generated more possible solutions for the problems we were attempting to solve.

The use of reflective questioning is essential in training and can easily be applied to other contexts. Programmed knowledge does not necessarily lead to the ability to solve a problem. By asking a question; reflective, probing, clarifying, analytical or explorative, you are forced to construct new knowledge and develop strategic actions and potential paths which can lead to a successful resolution.

read COACHES PERSPECTIVE
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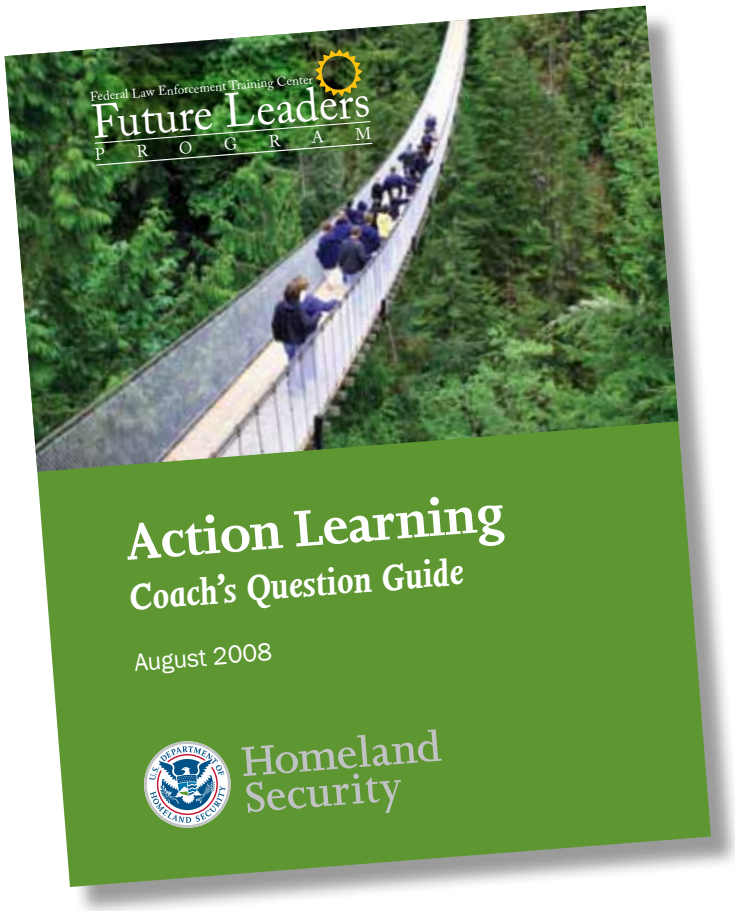

Federal Law Enforcement Training Center
Future Leaders
PROGRAM

Action Learning From a Coach's Perspective

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Action Learning functions much like the use of the Socratic method in law school. In law school, the professor uses questions to guide students in identifying the best answer to a legal problem. In Action Learning, the coach and fellow team members use questions to not only find the best solution to a problem, but also help the individual team members become more self aware and more effective as leaders in an organization.

Another benefit of Action Learning is that it is a tremendous tool for neutralizing the "meeting bully." The meeting bully is that person who attends a meeting and has all the answers and forces their solution on the team. The bully may be more senior to others in the session and/or more verbally developed so that they either intimidate or force their solution on the rest of the group through the use of statements. Since Action Learning only allows the use of statements in response to a question, the bully is not able to dominate the team as they can in a typical meeting environment.

The ability to neutralize the meeting bully and enable all team members to gain greater self awareness and knowledge about the organization makes Action Learning an effective process that leaders can utilize throughout the Federal Law Enforcement Training Center. It is a great alternative to the normal problem solving process and in fact has already been used in the Environmental and Safety Division to help identify the best way to implement recycling at the Glynco campus. In a very informal survey of the group that worked on the recycling problem, the participants uniformly praised the different way of running a meeting and solving a problem. ❑FJ

Too much exercise?

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Acute Exertional Rhabdomyolysis in the Training Environment

RHAB•DO•MY•OL•Y•SIS

Rhabdomyolysis is a serious and potentially life threatening illness caused by severe damage to skeletal muscle. Acute Exertional Rhabdomyolysis (AER) is triggered by intense exercise and has raised concern among physical trainers in the military, public safety, law enforcement, and other arenas where strenuous physical training is common. Fortunately, AER is rarely observed in comparison to other training injuries; however, athletes, instructors, and trainers need to be familiar with its signs and symptoms in order to take appropriate action. When detected early, prompt treatment greatly increases the likelihood of a favorable outcome. Awareness of the contributing factors provide the greatest protection by reducing or eliminating them.

HISTORICAL PERSPECTIVE

Signs and symptoms of rhabdomyolysis were first noted in the 1940s and was then termed "crush syndrome" [(2)]. Until 1960, AER was believed to be a rare phenomenon as only 36 cases had been reported in the first half of the century. Another report in 1960 cited 60 marine recruits who sought medical attention for signs and symptoms of AER. More attention was given to this syndrome in 1971 when 40 men in the Marine Corps were hospitalized for severe muscle pain, swelling, and weakness. Since then,

numerous cases of AER have been reported in association with physical training programs [3]. Today, 26,000 cases of rhabdomyolysis from all causes are reported annually and most cases of AER involve military recruits, law enforcement trainees, and fire department trainees[6].

UNDERSTANDING AER

As stated earlier, rhabdomyolysis results from several different causes. AER is believed to occur when the energy demand of a physical activity greatly exceeds the muscle(s) ability to produce energy necessary to meet those demands [1]. Regardless of the cause, when skeletal muscle is damaged, its cellular contents spill into the blood stream. These substances include creatine kinase, (a muscle enzyme abbreviated either CK or CPK), myoglobin (a muscle protein), and the electrolytes potassium, calcium, and phosphorus. Complications can result from electrolyte imbalances such as cardiac dysrhythmias (irregular heartbeats) and even cardiac arrest. High levels of circulating myoglobin provide an additional risk and if not detected and treated early will affect the kidneys by blocking the filtering structures (renal tubules). The blockage causes tubular necrosis and ultimately acute renal failure which is often fatal [1]. An intense exercise session is often accompanied by dehydration which magnifies the problem due to a low circulating volume that helps flush out the myoglobin from the kidneys. Other complications that may occur are swelling of large muscle groups that can result in compartment syndromes leading to neurovascular (nerves and blood vessels) compression, and Disseminated Intravascular Coagulation (DIC) where blood begins to coagulate (clot) throughout the body[6].

PREDISPOSING FACTORS

Physical trainers need to be very familiar with the various factors that may predispose someone to AER. It can actually affect people of any race, age, or fitness level (that means physical training instructors can also be at risk!), however, certain traits and/or circumstances increase ones risk of this life threatening syndrome. AER can occur in any situation that requires extreme physical labor, especially when there has been an abrupt increase in exercise or physical intensity relative to present conditioning. It has been reported in long-distance runners, weight lifters, football players, and as previously mentioned, law enforcement trainees and military recruits. Poorly conditioned "weekend warriors" may be at an increased risk, although studies are lacking. Other risk factors include high temperature and humidity levels, and inadequate fluid intake. Certain medical conditions increase the risk of AER, such as Sickle Cell Anemia, Muscular Dystrophy, and McArdles Disease. Physical trainers also need to identify those who have a history of heat

illness (especially heat exhaustion and heat stroke), recent viral illness, and those taking over the counter medications for colds, and prescription blood pressure medications[3,5].

SIGNS AND SYMPTOMS

The hallmark features of AER are severe muscle pain, tenderness and swelling, and dark (tea colored) urine in someone who reports a recent bout of exercise. Symptoms usually develop within 24-48 hours [(5)]. Other features include bruising, weakness, fever, nausea, vomiting, confusion, agitation, and anuria (absence of urine) [(6)]. Anyone exhibiting these signs and symptoms should be referred to a medical facility immediately. Laboratory testing for CK is the most reliable indicator for diagnosing rhabdomyolysis [(5)]. Labs will also test for the presence of myoglobin in the urine. AER should be distinguished from delayed-onset muscle soreness (DOMS), which is not serious. It is thought that DOMS is the result of microscopic tearing of muscle fibers resulting in soreness and stiffness in the exercised muscle group or groups. DOMS is a normal response to beginning an exercise program, changing activities, or increasing intensity of an activity. It is generally worse in the first two days following the activity and subsides over the next few days. Over time this adaptation leads to greater muscle strength and endurance and the same activity will no longer result in soreness[4,5].

TREATMENT AND PREVENTION

Treatment at the physical trainer or instructor level is limited to identifying a possible case of AER and rapidly referring them to definitive health care. This may involve activating EMS or transporting them to a health care facility. In the meantime, remove them from a heated environment if possible and initiate cooling measures. Hydration with cool water can be attempted if the subject is not nauseated (heat illnesses are often present with AER). Intravenous (IV) hydration should be initiated as early as possible by health care professionals. Initially, normal saline should be given at a rate of 1.5 liters per hour[6]. ***Physical training instructors and enthusiasts should use the following guidelines for preventing AER:***

1 Advising trainees to stay hydrated. This can be accomplished by drinking water steadily throughout the day and by increasing fruits and vegetables in the diet.
2 During physical exertion, have trainees drink water on a schedule, not by thirst. Never deny a trainee water if they request it.
3 Conditioning training ***must*** be conducted in a ***progressive manner!*** Gradually increasing the workload over a period of time is essential. Weights targeting the core (large) muscle groups should be limited to no more than 3 sets of 8-12 repetitions. Avoid workouts that push the trainee to exhaustion. Exhaustive workouts are a definite risk factor for AER (eg. hundreds of exercises such as push-ups, sit-ups, pull-ups, etc.).
4 Identify trainees who are sick or taking any over-the-counter cold medications or prescription blood pressure medication. If they are running a fever, they should not be exercising in the heat. Advise anyone who is taking medications to increase their fluid intake.
5 Strongly discourage trainees from using stimulants and creatine supplements.
6 Alcohol should be avoided on days prior to workouts.
7 Remember, workouts are for conditioning, not "breaking", "weeding out", or punishing trainees.
8 Always err on the side of cau tion – refer all heat related illnesses or suspected AER (severe soreness in large muscle groups) to a health care facility [(7)].

AER is but one illness that can strike any participant in a physical training environment. Physical trainers (and novice exercisers) need to be educated about this situation, and other related life-threatening conditions (e.g. heat illnesses). Individuals must be able to recognize the signs and symptoms, render prompt first aid, and immediately make arrangements for definitive health care. The most effective exercise program is one that is both safe and conducive to preventing injuries and illnesses. Adequate hydration and gradual increases in frequency, intensity, and duration must be fundamental to any physical training program. It is also this author's opinion/suggestion for law enforcement training academies to be very clear when informing applicants of what to expect in their training program. Applicants should be strongly encouraged to begin an exercise program months before arriving at their training institution. ❑FJ

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[1]Brown, Thomas D, DO, *Exertional Rhabdomyolysis – Early Recognition Is The Key*; The Physician and Sportsmedicine, Vol. 32, no. 4, April 2004.
[2]*Crush Syndrome*, Wikipedia, The Free Encyclopedia; http://en.wikipedia.org/wiki/crush_syndrome.
[3]Line, Robert L, George Rust; *Acute Exertional Rhabdomyolysis*; American Family Physician, August 1995. http:/findarticles.com/p/articles/mi_m3225/is_n2_v52/ai_17281983.
[4]Quinn, Elizabeth; *Delayed Onset Muscle Soreness*; Reviewed by Rich Fogores, M.D.; About.com: Sportsmedicine; sportsmedicine.about.com/cs/injuries/a/aa010600.htm.
[5]Rentz, Stan, Pharm D; *Exertional Rhabdomyolysis*; posted 5/6/2007, http:/www.athleteinme.com.
[6]Sauret, John M. M.D., George Marinides, M.D.; *Rhabdomyolysis*; American Family Physician; Vol. 65/ no. 5, March 2002.
[7]Silva, Joe; Senior Instructor, Physical Techniques Division (PTD), Federal Law Enforcement Training Center; *Exertional Rhabdomyolysis (Rhabdo)*.

this tool is a universal language of observable behavior that helps them better know themselves, enhance communication, enhance their knowledge of others basic needs, and provide their followers with a working climate for motivation.

What is a paradigm, and why does LELI talk about paradigms? As social scientists explain, this term is used to describe the set of experiences, beliefs and values that affect the way an individual perceives reality and responds to that perception.[3] Too many leaders expect people to adapt to them, however how people respond is often a result of the filter or paradigm that has influenced their lives and how they perceive things. It's not until we realize that the power of a leader resides in the follower, and to be most effective, leaders must instead focus on the behavior of those followers. Leadership then is not just about personality or the bottom line. It's about how people react to what we do and say.[4]

Understanding behavior and paradigms is paramount to effective leadership. The effect of globalization and its impact on law enforcement is an important consideration for LELI. Interacting with our international brother and sister officers have confirmed that we have so much in common. We all face human behavior issues, we share responsibility for protecting citizen's rights, and we hold positions of public trust.

As LELI shared the FLETC guiding principles of American law enforcement leadership: Responsibility, Vision, Understanding, and Ethics, it was learned however that the leadership behaviors of some of our international partners had been very different. Leaders are often hindered in bringing out the best in people because they do not understand that that they can only bring out the best in others through a personal effort of their own. People cannot perform at their best in an environment of pressure and fear of failure.[5]

During the recent ILEA leadership course, an interpreter for the Romanian National Police captured it best when she said to the LELI staff on behalf of the class of foreign officers, "We want you to know what a gift the FLETC has given our country. Our law enforcement has been molded and formed by over fifty years of communism. We only know of leadership through dictatorship and ruling solely as an authoritarian. We had no other way at looking at our jobs, or the people we supervise and serve. This training will make such a difference for the future law enforcement leadership of our country. We want to advance in the world and now we know what is best for us to do to lead our people. Thank you so much."

Understanding the changing dynamics in law enforcement both within and beyond our own organization, especially in today's interconnected world is essential to effective leadership. This shared vision of leadership with other leadership trainers demonstrates a similar picture and clear path of commitment to one another to achieve excellence. In the Fifth Discipline, Peter Senge observed that team learning allows the group to discover insights not attainable by the individual.[6]

Another area of impact for LELI is to come full circle and participate in FLETC basic training programs. Just as foreign law enforcement officials who had operated under dictatorships now better understand behavior, values and principles, it remains important that FLETC graduates understand that every officer is a leader and a leader always represents hope and a quality of life for the communities we serve here in our homeland. With that leadership comes responsibility. LELI instills in new students an understanding that regardless of the badge that each new graduate receives, that they also understand that the badge is just a symbol of authority to enforce laws. It is the person behind the badge that must exercise sound judgment as to how the laws are used. FLETC graduates will make a difference and gain a high public trust when they exhibit high moral character and follow the core leadership principles of service, justice and fundamental fairness. It will be their integrity, principles and character that are their foundation and real armor that ensures justice for our country.[7]

The Law Enforcement Leadership Institute is the FLETC's doorway to leadership excellence. LELI continues to move forward with the responsibility to grow talent and help create the world's best law enforcement leaders for the partner organizations and the FLETC staff. To do that, leaders will be instilled with a better understanding of human behavior to recognize that they can only bring out the best in others through a personal effort of their own. Leaders who look inward for the explanation of follower behavior will gain a much greater appreciation for the actions of their followers. ❑FJ

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[1]Daniels, A. *Bringing out the Best in People* (New York, McGraw- Hill, 2000)

[2]Palmer, P. *The Courage to Teach* (San Francisco, Josey-Bass, 1998)

[3]*Leading Law Enforcement in the 21st Century.* (Glynco, GA., LELI Training Program, 2008)

[4]Daniels, A., Daniels, J., *Measure of a Leader,* (Atlanta, Performance Management Publications, 2005):131

[5]Ibid

[6]Senge, P., *The Fifth Discipline – The Art and Practice of the Learning Organization,* (New York, Doubleday, 1990)

[7]Nila, M., Covey, S.R., *The Nobility of Policing,* (Salt Lake City, Franklin Covey, 2008)

Arizona v. Gant

continued from page 18

the object(s) of the search. The rule in a *Gant* search incident to arrest, however, first requires a lawful custodial arrest of an occupant or recent occupant of a vehicle. A search of the *passenger compartment* incident to arrest is then justified by a reasonable belief that evidence of the crime of arrest might be in the car.[25]

If *Gant*'s "reasonable to believe" standard is equal to probable cause, then the Court has created an M.C. Escher-like puzzle.[26] An officer who has made a custodial arrest and has a reasonable belief (equated to probable cause) that evidence of the crime of arrest might be in the car could search only the passenger compartment. An officer who has made no arrest, but has probable cause to believe that evidence of *any* crime is in the car, could search the entire vehicle. In other words, the officer who meets the higher standard (custodial arrest + probable cause for particular evidence) gets to search less, but the officer who meets the lesser standard (probable cause for any evidence) can search more. At best, the Court would have created a new search warrant exception that is instantly swallowed by another that has existed for almost 85 years.

The better explanation is that reasonable means… reasonable. There is no need to equate "reasonable to believe" to a percentage or particular level of probability; in fact, the Supreme Court has stated that "the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application."[27] Rather, as in issues regarding an officer's use of force, the proper application of the reasonableness standard "requires careful attention to the facts and circumstances of each particular case" and "must be judged from the perspective of a reasonable officer on the scene."[28] The ultimate question should be whether another reasonable officer, if confronted with the same facts and circumstances, could believe that evidence of the arrestee's crime might be found in the vehicle the arrestee recently occupied. Facts and circumstances leading to such a reasonable belief will include information about the offense and the offender, the age of the information, the nature of the crime at issue, the behavior of the arrestee before, during, and after the arrest, ownership and control of the vehicle, and results of questioning arrestees and occupants.

Is the "offense-related evidence" justification limited to vehicular SIAs? The short answer is: yes. *Gant* explicitly states that the offense-related evidence justification for an SIA is based upon "circumstances unique to the automobile context."[29] The Court did not expound upon why it believed vehicles to be special in this context, but Justice Scalia's concurrence in *Thornton* – from which the language was taken – reminds us that motor vehicles are "a category of 'effects' which give rise to a reduced expectation of privacy and heightened law enforcement needs."[30] Therefore, it appears as though officers may not justify a search of an arrestee's *non-vehicular* lunging area based upon a reasonable belief that evidence of his crime might be found therein. Rather, they will have to articulate reason to believe that the arrestee could access the area at the time of the search.

Other Vehicle Search Exceptions Remain Available

If an officer cannot justify a search of a vehicle incident to arrest under *Gant*, or is uncertain whether an SIA is warranted, other established exceptions to the search warrant requirement remain available to safeguard evidence and protect the safety of officers.

(1) If an officer has a reasonable suspicion that a passenger or recent occupant of a vehicle – whether arrested or not – is dangerous and may gain access to a weapon, he may frisk the passenger compartment for weapons.[31] (This exception is known as a Terry frisk of the vehicle.)

(2) If the officer has probable cause that the vehicle contains evidence of criminal activity, the officer may conduct a thorough search of any area of the vehicle in which the evidence might be found.[32] (This exception is the aforementioned "mobile conveyance exception" or the Carroll Doctrine.)

(3) If an officer conducting an arrest reasonably suspects that a dangerous person is hiding in a nearby vehicle, he may conduct a protective sweep of the vehicle by looking in places where such a person might be concealed.[33]

(4) Consent will always allow an officer to search, as long as it is given voluntarily by one with actual or apparent authority to give it, and the officer stays within the boundaries of the consent given.[34]

(5) Although not permitted for use as a criminal search tool, an officer

who effects a lawful impound of a vehicle may inventory its contents in accordance with standardized agency policy. If the inventory is performed lawfully, any evidence or contraband identified during the process may be seized and used as evidence in a criminal prosecution, and may provide justification for another warrant exception.[35]

Given the *Gant* Court's failure to define its "reasonable to believe" standard, one cannot be certain how lower courts will apply that portion of the decision. For that reason, officers may be well advised to consider the applicability of the other, well-established vehicle search exceptions *before* relying on an SIA. ❑FJ

[1]556 U.S. ___ (2009), 2009 U.S. LEXIS 3120. The text of the opinion is available at http://straylight.law.cornell.edu/supct/html/07-542.ZS.html.

[2]Thornton v. United States, 541 U.S. 615, 626-27 (2004) (Scalia, J., concurring in judgment).

[3]Chimel v. California, 395 U.S. 752, 762-63 (1969); see also United States v. Pratt, 355 F.3d 1119, 1121 (8th Cir. 2004) ("[I]f an officer has arrested an individual, the officer may search the individual's person incident to arrest and may reach into his pockets").

[4]Thornton, 541 U.S. at 626 (Scalia, J., concurring in judgment).

[5]United States v. Pratt, 355 F.3d 1119, 1121 (8th Cir. 2004), citing United States v. Robinson, 414 U.S. 218, 235-36 (1973) ("[O]fficers need not have any reason to think the individual is armed or that evidence of the crime will be found on his person. It is the fact of arrest that enables the officer to conduct a search, not a particularized suspicion as to the suspect's dangerousness").

[6]New York v. Belton, 453 U.S. 454 (1981), citing United States v. Robinson, 414 U.S. 218, 235 (1973).

[7]United States v. Passaro, 624 F.2d 938, 943-44 (9th Cir. 1980) (search incident to arrest doctrine allows search of arrestee's wallet).

[8]United States v. Robinson, 414 U.S. 218 (1973).

[9]"Robinson stands for the proposition that, after a proper custodial arrest has been made, it is unnecessary to obtain a warrant to search the arrestee's person and clothing because it is the arrest that constitutes the significant intrusion under the Fourth Amendment; the search of the person is incidental and does not require additional justification. See Robinson, 414 U.S. at 235. However, 'unlike searches of the person, searches of possessions within an arrestee's immediate control cannot be justified by any reduced expectations of privacy caused by the arrest'" but must be based upon the "exigencies of the situation." United States v. Morgan, 936 F.2d 1561, 1578 (10th Cir. 1991) (internal citations omitted).

[10]Belton, 453 U.S. at 462, n.5.

[11]Much of the case law authorizing this practice has applied Belton to non-vehicular arrests in an attempt to create a bright-line rule for law enforcement. See, e.g. United States v. Palumbo, 735 F.2d 1095, 1096-97 (8th Cir. 1984)(explaining, in a non-vehicular search context, that the Belton rule "defines the area generally which may be searched, and is not constrained because the arrestee is unlikely at the time of the arrest to actually reach into that area."); United States v. Queen, 847 F.2d 346, 352-54 (7th Cir. 1988) (citing numerous cases in upholding a search incident to an arrest where the arrestee was handcuffed behind his back inside of a residence, but failing to distinguish vehicular and non-vehicular cases under Belton); United States v. Silva, 745 F.2d 840 (4th Cir. 1984) (applying Belton in a non-vehicular case to uphold the seizure of a zippered bag although the arrestee -- who was handcuffed behind his back -- was sitting on a bed in a motel room surrounded by armed FBI agents). Belton, however, is useful only to define that portion of a vehicle that may be searched when an SIA is justified, and is probably not generalizable to a non-vehicular context. See United States v. Myers, 308 F.3d 251, 269 (3rd Cir. 2002), citing Belton, 453 U.S. at 460 n.3 ("In a further attempt to clarify that it was only applying the rule of Chimel to the unique circumstances of a post-arrest warrantless search of an automobile, the Court stated, 'our holding today does no more than determine the meaning of Chimel's principles in this particular and problematic context. It in no way alters the fundamental principles established in the Chimel case regarding the basic scope of searches incident to lawful custodial arrest.'").

[12]See, e.g., United States v. Myers, 308 F.3d 251, 267 (3d Cir. 2002) (finding that an arrestee who was handcuffed behind his back while lying face down on the floor and "covered" by two armed police officers while another officer searched his bag would have had to possess superhuman qualities to access to the bag at the time of the search).

[13]Myers, 308 F.3d at 267 (3d Cir. 2002), citing United States v. Abdul-Saboor, 85 F.3d 664, 669 (D.C. Cir. 1996).

[14]Gant, 556 U.S. ___ (2009), 2009 U.S. LEXIS 3120 at *11.

[15]Id., 2009 U.S. LEXIS 3120 at *12.

[16]Id., 2009 U.S. LEXIS 3120 at *54 ("The first part of the Court's new two-part rule -- which permits an arresting officer to search the area within an arrestee's reach at the time of the search -- applies, at least for now, only to vehicle occupants and recent occupants, but there is no logical reason why the same rule should not apply to all arrestees.")

[17]Id., 2009 U.S. LEXIS 3120 at *11.

[18]Compare United States v. Morgan, 936 F.2d 1561, 1579 (10th Cir. 1991) (invalidating a search of a suspect's bag following his arrest where the bag was never closer than ten to fifteen feet behind the suspect during his arrest, it was not seized until he was handcuffed to a nearby fence, and it was not searched until several hours later at the police station) with State v. Galpin, 80 P.3d 1207 (Mont. 2003) (defendant's coat and duffel bag 4-6 feet from him at time of arrest lawfully searched incident to defendant's arrest notwithstanding fact he was "handcuffed and placed on his knees," as that placed him "in even closer proximity to his coat and duffel bag" and "a man leaning his body and reaching, even with his hands in cuffs, could potentially reach the articles within that range").

[19]See, e.g. United States v. Jones, 475 F.2d 723 (5th Cir. 1973) ("The record is unclear whether [the defendant's] hands were cuffed in front or behind his back and does not reveal the defendant's location in relation to the suitcase that the time of the search. Both of these facts are relevant to a determination of access to weapons or destructible evidence. . . in the Chimel analysis.") One might argue there is a possibility that officers might "leave[] a suspect unrestrained nearby just to manufacture authority to search." Thornton, 541 U.S. at 627 (2004) (Scalia, J., concurring in judgment). Justice Scalia anticipated this argument, however, and has opined that neglecting sensible police procedures solely to justify a search might render the search itself unreasonable. Id.

[20]See United States v. McConney, 728 F.2d 1195, 1207 (9th Cir. Cal. 1984) (en banc) ("The critical inquiry, then, is whether the search that produced [the defendant's] pistol was properly limited to the area within

his immediate control at the time of his arrest. The number of persons being arrest[ed], the number of officers present, their physical positioning with regard to the arrestee and the place searched, the display of guns by the officers and, of course, the distance between the arrestee and the place searched are all factors to be weighed by the court.")

[21]Compare United States v. Abdul-Saboor, 85 F.3d 664, 670 (D.C. Cir. 1996) (area was within arrestee's immediate control because although arrestee was handcuffed, arrestee attempted to retrieve a loaded shotgun after police entered his room, and he specifically requested entry to the area to be searched); with United States v. Lyons, 227 U.S. App. D.C. 284, 706 F.2d 321, 300-31 (D.C. Cir. 1983) (search incident to arrest not justified where arrestee was handcuffed, the closet that was searched was several yards away, six police officers were in the room with arrestee, no weapons had yet been uncovered, and arrestee had collapsed and been revived before the search began). See also United States v. Mitchell, 64 F.3d 1105, 1110 (7th Cir. 1995) (Suspect's handcuffing did not destroy the officer's justification for searching the briefcase, where the officer had observed the suspect about to throw the briefcase out the window immediately before arresting him, had arrested the suspect after seeing a gun in his waistband, and had reason to fear that a confederate might come through the door at any moment and either grab for the briefcase or create an opportunity for the suspect to grab for the briefcase, and the briefcase had been in the suspect's control when he was arrested and was lying near him when the officer picked it up.)

[22]See, e.g., United States v. Roper, 681 F.2d 1354, 1358-1359 (11th Cir. 1982) ("The obvious peril created by attempting to arrest a suspected drug dealer in a hallway where other arrests are taking place while bystanders looked on sufficiently established exigent circumstances to justify returning [the arrestee] to his room. In this situation, the officers were authorized to search the area within his control for weapons and evidence.")

[23]"The rule of Chimel does not permit the arresting officers to lead the accused from place to place and use his presence in each location to justify a search incident to arrest." United States v. Whitten, 706 F.2d 1000, 1016 (9th Cir. 1983). Where it is necessary to move an arrestee into another room in the house from where the arrest occurred to obtain clothing, however, a law enforcement officer will be justified in accompanying the arrestee. If the officer observes evidence in plain view, it may be seized. This is so even if the decision to move the arrestee was made by a law enforcement officer rather than the arrestee. See, e.g. United States v. DiStefano, 555 F.2d 1094, 1101 (2nd Cir. 1977); United States v. Titus, 445 F.2d 577, 579 (2nd Cir. 1971) (holding officers were justified in accompanying arrestee into home based upon duty to clothe the arrestee or permit arrestee to do so). Thus, an object not in the arrestee's control at the moment of arrest may later come into his control. See, e.g. United States v. Ricks, 817 F.2d 692 (11th Cir. 1987) (arrestee asked for his jacket, which was hanging in closet, so search of jacket pockets incident to arrest proper).

[24]Carroll v. United States, 267 U.S. 132 (1925); see also Fernandez v. United States, 321 F.2d 283, 286-287 (9th Cir. 1963) ("It is well-settled that a valid search of a vehicle moving on a public highway may be had without a warrant, if probable cause for the search exists, i.e., facts sufficient to warrant a man of reasonable caution in the belief that an offense is being committed") (citations omitted); United States v. Patterson, 140 F.3d 767, 773 (8th Cir), cert. denied, 525 U.S. 907 (1998)(A warrantless search of a vehicle is permissible where law enforcement officers have "probable cause to believe that contraband or evidence of criminal activity [will] be found").

[25]Gant, 556 U.S. ___ (2009), 2009 U.S. LEXIS 3120 at *20 (In some cases, "the offense of arrest will supply a basis for searching the passenger compartment of an arrestee's vehicles and any containers therein.") (emphasis added.)

[26]M.C. Escher is famous for his "impossible structure" illustrations, in which the viewer cannot tell where one aspect of the drawing ends and another begins.

[27]Graham v. Connor, 490 U.S. 386, 396 (1989), citing Bell v. Wolfish, 441 U.S. 520, 559 (1979).

[28]Id. at 396.

[29]Gant, 556 U.S. ___ (2009), 2009 U.S. LEXIS 3120 at *6; see also id. at *20 ("Although it does not follow from Chimel, we also conclude that circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle") (internal quotations omitted).

[30]Thornton, 541 U.S. at 641 (Scalia, J., concurring in judgment).

[31]Michigan v. Long, 463 U.S. 1032 (1983).

[32]Carroll v. United States, 267 U.S. 132 (1925).

[33]A protective sweep is lawful where there are "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." Maryland v. Buie, 494 U.S. 325, 334 (1990); and cf. United States v. Jones, 471 F.3d 868 (8th Cir. 2006) (upholding protective sweep of vehicle parked on public street during execution of search warrant at adjacent residence based upon officers' reasonable belief that vehicle could contain person who posed a danger to officers at the scene).

[34]Both "the Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force." Schneckloth v. Bustamonte, 412 U.S. 218, 228 (1973). "A third party's consent to search is valid if that person has either the 'actual authority' or the 'apparent authority' to consent to a search of that property." United States v. Kimoana, 383 F.3d 1215, 1221 (10th Cir. 2004) (citations omitted).

[35]See, e.g. Michigan v. Thomas, 458 U.S. 259, 261-62 (1982) (per curiam) (an inventory of the car's glove compartment revealed marijuana, which provided probable cause for a more comprehensive, warrantless search. "[W]hen police officers have probable cause to believe there is contraband inside an automobile that has been stopped on the road, the officers may conduct a warrantless search of the vehicle, even after it has been impounded and is in police custody").

Let's Talk

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In March of 2009 the Criminal Investigator Training Program (CITP) Curriculum Review Conference (CRC) was held. I attended the conference and was very impressed with the process and how productive the meetings went. A major component leading up to the conference was having working groups meet and exchange information between the Partner Organizations (POs) and the training divisions. What I found very interesting at the beginning of the workshops was how concerned the POs were in regards to the poor communication skills (meaning face-to-face communication) of their new recruits. The POs felt that these new employees needed additional instruction in this area and that the Behavioral Science Division (BSD) needed to provide a means to improve these soft skills before their students graduated.

The decision-makers, meaning representatives from the POs, and the representatives from the training divisions are mostly from the baby boomer generation with a few members from the X generation. However our student population is mostly from the X generation, meaning those who have grown up using computers, cell phones and putting the art of text messaging to use. This means our students have little practice talking to another person face-to-face. These weak skills really show up during the students' interviewing laboratories and practical exercises. This made a lot of sense to me because of my experiences with family and being around young people.

To reinforce the views of the POs and my own personal opinion concerning this subject area, here's a few examples. This morning I had coffee with a friend of mine, and we were discussing this very subject. He told me that last month his teenage son had 15,000 text messages on his cell phone. Now perhaps in the near future this young man may become a second generation of his family to pursue the law enforcement profession. If he does, he probably will fall into the same category of our present students. Meaning he hasn't developed the skills of talking to someone face-to-face, which is critical in our line of work.

Here are some other examples. I was with my wife and 19-year-old daughter driving to Tampa to see our son (her brother) and family when I noticed no one was talking. When I looked, I noticed both of them were texting. Yes, maybe I'm that boring but when I was growing up we talked to one another. In January my wife and I went to the Glynn Academy Beauty Pageant and when I looked over to my right I observed two teenage girls sitting next to me texting. I will say this; they were very good. I was impressed! I don't want to bore my readers with other examples because you have your own stories to tell, but how do we turn this thing around? Maybe when our students come to train, we don't allow them to bring their phones to class. Instead, they must leave their phones in their room. Or develop more interactive exercises so they get to practice or do what my coffee buddy said to his kids when they were out to eat, "Put those phones away, and 'Let's talk.'" ❑FJ

Picture This

Shovel Ready Project

In the late 18th Century construction began on a canal connecting Darien to Brunswick, GA. Its financial backers and builders envisioned the canal as a superhighway of its time. The canal would speed the delivery of lumber, cotton and rice from the Altamaha River system to the port of Brunswick. Unfortunately, in the early 1800s the project went bust. Then in the 1820s financing was found and construction resumed. But within a decade the locomotive became the perferred engine of commerce and railroads supplanted canals as the new superhighway. Today, sections of the canal are still visible. (Photo: Fred Charles, fred.charles@dhs.gov)

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