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### **I. AELE analysis: When force against the mentally disturbed is justified**

The scenario is one that's often in the headlines and ultimately in the courts: A distraught and frightened family calls for help in controlling a mentally disturbed or suicidal relative. When cops respond, the confrontation escalates and the subject ends up injured or dead from police use of force. The family claims the force was excessive, and sues.

What guidelines do courts offer to trainers, officers, and force reviewers in these circumstances?

That question is addressed in a 2-part analysis recently launched in the free *Monthly Law Journal* published online by Americans for Effective Law Enforcement, the leading case monitoring and legal training organization for the policing profession.

"Police confronting a disturbed or suicidal person face a number of dilemmas," AELE states in introducing the series. "Under what circumstances can they use force to subdue or restrain the individual? When can 'significant' levels of force or even deadly force be justified? At what point should the use of force end? What tactics are best to accomplish the goals of protecting the public, protecting the subject, and protecting the officers involved? Can officers be held liable for failure to prevent a 'successful' suicide?"

Part 1 discusses and provides links to 9 different federal court decisions that reflect the prevailing judicial thinking on such questions.

In some cases, the written opinions carry Force Science implications. In *Untalan v. City of Lorain*, for example, a 6th Circuit court dealt with a situation in which a violent person with schizophrenia lost control of a butcher knife just before being shot. In its opinion, the court discussed reaction-time considerations in ruling that the shooting was justified. In another 6th Circuit case, *Summerland v. County of Livingston*, contextual cues were involved in the shooting of a deranged male who postured as if pointing a long gun at deputies but who was in fact not armed with a firearm.

Despite the variety of circumstances in the cases presented, the courts' conclusions are in agreement, AELE points out. Force, including lethal force, can be considered reasonable and justified when used against disturbed persons in the defense of others--even if the ironic result is the death of a subject whom officers were summoned to save from suicide.

Even the *anticipation* that an unstable individual may engage in conduct that could pose a serious risk of harm to others may be sufficient. In *Long v. Slaton*, an 11th Circuit case, an Alabama deputy was found to have acted reasonably in shooting to death a mentally disturbed suspect who took possession of a marked squad car and began backing away. The court ruled that the decedent could have used the car to injure or kill someone else, especially since it cloaked him with the "apparent authority of a police officer."

In addition to deadly force, the cases cited include those involving beanbag rounds, tear gas, and pepper spray.

Part 1 of the series is posted now at: [www.aele.org/law/2012-02MLJ101.html](http://www.aele.org/law/2012-02MLJ101.html)

Part 2 is expected to be available on AELE's website no later than Feb. 29. Part 2 will discuss appropriate options for restraining disturbed or suicidal persons, what actions should be taken after resistance ceases, and where to find additional resources and references.

You can sign up for a free E-Mail Alert that will notify you when that article is uploaded, as well as when AELE posts reports of significant state and federal cases regarding public safety liability and employment law. Just go to [www.aele.org/e-signup.html](http://www.aele.org/e-signup.html) and fill out the short form there.

## **II. Correction & elaboration on prone positioning study report**

Our apologies. We misinterpreted 1 set of statistics cited in our recent report on a new study that challenges the assertion that prone positioning is especially dangerous for subdued subjects (see FSN Transmission #196, sent 1/30/12).

We stated that of the subjects in the study who were Tasered, about 29 percent ended up in a prone position, while 25 percent ended up not prone. That's incorrect.

We SHOULD have written: "Of the large number of subjects studied, about 29 percent of those who ended up prone had been Tasered, and of those who ended up not prone 25 percent had been Tasered. No deaths were recorded in the prone group."

(Our thanks to alert reader Jim Wilson, a certified Force Science Analyst, for calling the discrepancy to our attention.)

The researchers' conclusion remains as we reported: Prone positioning after CEW deployment is *not* more dangerous for the subject involved.

Meanwhile, Dr. Christine Hall, lead author of the study, reports that some critics of the research have questioned its validity on grounds that officers involved "knew they were being monitored so they faked the data." Hall offers this rebuttal, which you may find useful if you encounter similar objections:

"For nearly 2,000 officers to fabricate 3 consecutive years' worth of data would require a very widespread and sustained systematic fabrication of virtually ALL use-of-force report forms for that time period. Such widespread, let alone sophisticated and preplanned, fabrication is highly unlikely to have occurred across a large variety of shift-working officers."

Even though "hundreds of individuals in the study were prone without untoward outcome, leaving someone restrained in that position--or any other--without direct monitoring for anything over a few minutes is a poor plan," Hall cautions. "We advocate active monitoring of the face of the individual so that early distress may be detected in any position."

### **III. Full excited delirium report now available free online**

Also in our last issue [Transmission #196, 1/30/12] we carried highlights from a pending report on excited delirium syndrome (ExDS), prepared by an international panel of experts under the auspices of the Weapons and Protective Systems Technologies Center at Pennsylvania State University.

That report, funded by NIJ, has now been released and is available online free of charge as a PDF download at: <http://bit.ly/zryg9C>.

The report thoroughly documents the current scientific knowledge regarding this dangerous affliction and the recommended protocol for law enforcement and EMS working in collaboration in an effort to prevent a fatal outcome when the syndrome is encountered in the field.

### **IV. How are you keeping the edge as you age? Trainer needs your help**

In preparation for an ILEETA presentation, veteran trainer Bob (Coach) Lindsey wants to know how you're managing something you're doing every day: aging. Specifically, what are you doing to maintain your professional skill sets as growing older makes doing so more challenging?

"Aging affects all of us, regardless of gender, race, or rank," says Lindsey, a certified Force Science Analyst. "We may become wiser with time and experience, but we also may be vulnerable to cognitive and physical diminishment. Yet as police officers we have an extremely important need to maintain our skills to be fit for duty while aging."

"Some agencies take older officers out of front-line assignments and place them in investigative or administrative positions, but they are the exception. Many LEOs remain on patrol until they retire, often in late middle age."

"As you age, your visual acuity may be affected, you may develop physical restraints such as arthritis, you may be less capable cognitively to make critical split-second decisions, and so on. Even in retirement, given the federal regulations sanctioning concealed carry by former LEOs, it can be vital to maintain your performance capabilities. Aging does not prohibit good physical and mental ability, but it does require special tending."

At ILEETA's upcoming annual training conference (Apr. 16-21 in Wheeling, IL), Lindsey will speak on "Always the Warrior at Every Age." Now 68 and having first been sworn in 1964, he'll draw in part on his own experience. But he'd like also to incorporate the strategies of a

wide variety of other officers, both in-service and retired and of all ages, to create "a provocative, interactive session."

What do you do on a regular, consistent basis to keep your professional edge as you go through the aging process? How do you stay fit--or make adjustments--to be ready physically for foot pursuits, gunfights, hand-to-hand encounters, etc.? How do you stay sharp mentally to make sound decisions in crisis situations and avoid routine, mundane thinking? How are you accommodating the emotional changes that come with growing older? What role does your spiritual life play in your job, your family and friends, and to yourself? What obstacles do you encounter? What adjustments do you find necessary/useful? What do you feel are the strengths and weaknesses of your approach? In all candor, do you think you're winning the battle?

"Answers to any and all of these questions will be helpful," Lindsey says. "And I'd like to hear from officers of all ages, because the preparation for successfully aging needs to start ideally while you're still young."

Email him at: [Lindsey\\_r@bellsouth.net](mailto:Lindsey_r@bellsouth.net). "Police officers tend inherently to externalize things. They're trained observers, always looking outward at people and events," Lindsey says. "This requires some introspection, asking what you're doing to assure your personal safety and that of your fellow officers and community. It's a responsibility we all need to own."

Your confidentiality will be respected.

## **V. University lecture series to honor FSI's Lewinski**

A special series of public presentations to be inaugurated by Minnesota State University-Mankato is being named in honor of Dr. Bill Lewinski, executive director of the Force Science Institute, in recognition of his career-long contributions to the improvement of law enforcement.

The Lewinski Lecture Series, expected to kick off next fall, will annually bring to the campus some esteemed person who is conducting exceptional research and training in the criminal justice field to address students, faculty members, law enforcement professionals and the community at large on issues relevant to line officers, according to Dr. Jeff Bumgarner, who will coordinate the program. Bumgarner is director of the university's Center for Applied Research in Law Enforcement, which will sponsor the series, and chair of the school's Department of Government, which incorporates its widely recognized law enforcement program.

The initial speaker will be Lewinski himself, who will describe research breakthroughs being accomplished by the Force Science Institute. Before retiring nearly 2 years ago to devote full time to research and training, Lewinski was a 28-year member of MSU's law enforcement faculty.

In addition to the MSU honor, Lewinski was recently named a professor at the University of Padua in Italy, where he is participating in a major research project on enhanced hostage negotiation techniques under the auspices of the United Nations. He has also recently been asked to remotely head the Intelligence Department of a new law enforcement-focused university that will be based in Milan, Italy.