

BERNADETTE ROLEN Administratrix
of the Estate of Daniel Ficker, *et al.*,

Plaintiffs,

v.

CITY OF CLEVELAND, *et al.*,

Defendants

General Qualifications

I retired as the Chief of Police for the City of Tallahassee, Florida in 1994. During a twenty-five year law enforcement career, I served as a Chief of Police in four cities, in three states and as an Agent for the Federal Bureau of Investigation.

I served as an FBI Agent from 1969 to 1971 and as the Chief of Police in Morristown, Tennessee; Hickory, North Carolina; Asheville, North Carolina and Tallahassee, Florida during the time period from 1971 to 1994.

I served as an adjunct faculty member in criminal justice at Western Carolina University located at Cullowhee, North Carolina; Florida State University, Florida A&M University, and Tallahassee Community College located at Tallahassee, Florida; Walters State Community College located at Morristown, Tennessee and the University of Maine located at Augusta, Maine.

I have held several law enforcement certificates, including the Advanced Certificate from the State of North Carolina and Basic Certificates from Tennessee and Florida. I am currently certified by the National Institute of Ethics (NIE) as a Law Enforcement Ethics Instructor.

I completed my bachelor's degree at the University of South Florida, Tampa, Florida and my master's degree at Appalachian State University, Boone, North Carolina.

Specific Qualifications to Provide Opinions on This Case

In February 2001, while representing the University of Maine at the annual conference of the American Society for Law Enforcement Training (ASLET), I achieved the highest score on a written test entitled *Use of Force: Constitutional Limitations*. The test was prepared by the U.S. Department of Justice and administered, as a competition, for the eight hundred (800) attendees at the conference.

In November 2007, I was the first non-lawyer invited to be the lead speaker to address *The Legal Standards Regulating the Use of Force by Law Enforcement Officers* at the National Summit on Police Use of Force held in Arlington, Virginia.

I have authored over thirty-seven articles that have been published in legal, public administration and criminal justice professional journals, including many articles on police use of force. I also co-authored a book titled *Prevention and Investigation of Officer Involved Deaths*.

I am familiar with the protocols, standards, and model policies published by professional associations on use of force; investigation of crimes by off-duty officers; investigations by officers into crimes in which they have personal involvement; a law enforcement officers authority to take enforcement action outside his area of jurisdiction; and the level

of proof necessary before a police officer has authority to conduct a pat-down (frisk) of a suspect.

During my twenty-five year law enforcement career and my eighteen years as a law enforcement trainer and consultant, I have reviewed more than one hundred police involved shootings.

I have trained thousands of law enforcement officers on the legal and professional standards regulating the use of force and was certified until September 2009 on most use of force disciplines.

I have qualified and testified as an expert in law enforcement matters, including use of force, eighty-two times. My complete CV is attached as Appendix A to this report.

Objectivity

Over the past seventeen years my trial and deposition testimony has been approximately 70% plaintiffs and 30% defendants. A list of my trial and deposition testimony for the past four years is attached as Appendix B to this report.

Fees

My fee for the analysis in this case was \$6,000.00. The flat fee was based upon a \$150.00 hourly rate and an estimate that it would require approximately forty hours of work to review the materials provided and to prepare a report of opinions.

Items Reviewed and Relied Upon In Development of Opinions

Before developing my opinions in this case, I reviewed the materials listed in Appendix C attached to this report. The materials reviewed are of the type typically relied upon by consultants and experts when conducting an analysis of a police-involved incident and provided me with enough relevant data to develop my opinions to a reasonable degree of professional certainty.

Methodology Utilized In Developing Opinions

I reviewed the U.S. Supreme Court decisions *Daubert v. Merrill Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and in *Kumho Tire Company v. Carmichael*, 526 U.S. 137, 147 119 S. Ct. 1167 (1999) which established the standards for scientific, non-scientific, technical and specialized knowledge expert witnesses. It is my understanding that a non-scientific expert must be qualified to offer expert testimony by knowledge, skill, experience, training, or education. I have provided in this report both my general and specific qualifications that I believe prove my qualifications to provide expert testimony in this case.

It is also my understanding that an expert's testimony must be relevant to the specific facts of an incident under consideration and be of such a specialized nature that it would be beyond the knowledge of a typical juror. An expert's testimony must also be of assistance to the jury in understanding the evidence and issues presented to them.

I believe that my testimony regarding what officers are told in training programs about an officers authority to take law enforcement actions outside the jurisdiction of their employing agency; my testimony on what officers are taught in training programs as to when deadly force is authorized; my testimony on what officers are told in basic law enforcement training programs about investigating crimes in which they have a personal involvement; my testimony about what officers are taught in training programs about taking law enforcement action while in an off-duty status; my testimony as to what officers are taught in basic training as to the level of proof they must have to detain a suspect; and my testimony as to what officers are told in training programs about the level of proof an officer must have to conduct a pat-down search (frisk) of a suspect, are all areas of testimony which would assist the jury in understanding the evidence presented to them and is testimony relevant to the facts of this case.

The methodology used and conclusions reached by an expert must also be reliable. To ensure my methodology was reliable, I did not assign credibility to any witness, reviewed sufficient data to reach conclusions to a reasonable degree of professional certainty, developed a set of material and relevant facts only after a review of all materials provided, and assumed those facts to be true solely for the purpose of analysis. I then analyzed those facts against a backdrop of the professional standards and the protocols for police use of force and other practices, principles and protocols recognized, relied upon, and employed in the law enforcement profession on the date of this incident.

The methodology I have used in this case is the same that I have utilized for several years. The methodology has been accepted eighty-two times by presiding judges in previous cases in which I have testified at trial. The methodology is consistent with the methodology utilized by other experts in the field of law enforcement when conducting an analysis of police involved shooting incidents.

Summary of Relevant and Material Facts Assumed To Be True For Purposes of Analysis

The facts I assumed to be true for purposes of analysis in this case are outlined in Appendix D attached to this report. If asked to consider a different set of facts, I will analyze those facts and render opinions to the best of my ability.

Opinions

The basis and reasons for my opinions are premised upon my experience as a law enforcement officer, my education and training in law enforcement, my knowledge of law enforcement standards, analysis and study in the field, through consulting professional literature and the facts of this case as determined by a comprehensive review

of the materials listed in Appendix C. My opinions are based upon a synthesis of the above.

I presently hold the following opinions to a reasonable degree of professional certainty:

1. Cleveland Police Officer David Mindek violated the standards recognized in the law enforcement profession in 2011 and the standards recognized by the Cleveland Police Department in 2011 when he (1) failed to notify his supervisor and the Cleveland Police Dispatch Center that a crime had been committed at his home so they could dispatch an officer to investigate; (2) engaged in an investigation into a crime in which he had personal involvement; (3) engaged in an investigation of a crime while in an off-duty status; and (4) left the jurisdiction of the City of Cleveland Police to go to Parma, Ohio to investigate a crime and failed to notify the Parma Police of the investigation.

Law enforcement officers have been instructed in law enforcement training programs and provided with instructions published by law enforcement professional associations for the past twenty-five years that (1) law enforcement officers within certain municipalities may have no greater off-duty arrest powers outside their appointing jurisdiction than would the ordinary citizen under common law; (2) off-duty officers are prohibited from making arrests in which they are personally involved in the incident leading to the arrest; and (3) when a crime has been committed proper police action requires that the off-duty officer notify on-duty officers through the normal notification process....the police dispatch center (see Appendix E, IACP National Law Enforcement Policy Center Concepts and Issues Paper titled *Off-Duty Conduct: Powers of Arrest* originally published in 1988).

In this case, the City of Cleveland Police Department Internal Affairs investigation into the shooting death of Daniel Ficker found that (1) Officer Mindek did not report the crime that occurred at his home through the dispatch system non-emergency line; (2) Officer Mindek, while off-duty, took an active role in investigating his own crime complaint utilizing city resources; and (3) Officer Mindek went to Parma, Ohio to confront a suspect in a crime and failed to notify Parma Police regarding the nature of his activity and his location (see page 35 of Cleveland Police Department Internal Affairs Investigation regarding violations of standards Mindek committed).

2. Cleveland Police Officers Matthew Craska and David Mindek were not properly trained on the concept of reasonable suspicion and did not have the level of proof necessary to reasonably suspect that Daniel Ficker had committed the crime of theft from Officer Mindek's home. Lacking the level of proof necessary to establish reasonable suspicion, they had no authority to (1) detain Ficker; (2) to conduct a pat-down (frisk) of Ficker; or (3) to arrest Ficker.

In this case, the only information that Craska was aware of concerning Daniel Ficker was that Kim Mindek, Officer David Mindek's wife, had hosted a party at the Mindek's residence located at 1601 Mayview in Cleveland on July 3, 2011 and found after the party was over that several items of jewelry were missing from upstairs in her home and

that she had seen Daniel Ficker upstairs and thought that was strange.

Even the Cleveland Police Department Internal Affairs Investigation into the shooting death of Daniel Ficker by Officer Matthew Craska concluded that Officers Craska and Mindek did not have evidence to make Dan Ficker a named suspect in a report (see Cleveland Police Department Internal Affairs Investigation).

Law enforcement officers receive instruction in basic law enforcement training, and have been provided with guidance from law enforcement professional associations for the past twenty years or more, that they may only detain a person if they have articulable facts that, within the totality of the circumstances, would lead an officer to reasonably suspect that a criminal act had been committed or was being committed. They are also told in basic training, and have been provided with guidance from law enforcement professional associations for the past twenty years or more that a law enforcement officer has the right to perform a pat-down search of the outer garments of a suspect for weapons only if he has been legitimately stopped with reasonable suspicion and only when the officer has a reasonable fear for his own or another person's safety (see IACP Model Policy titled Field Interviews and Pat-Down Searches dated December 1, 1995 attached as Appendix F).

It should have been obvious to the leadership of the Cleveland Police Department in 2011 that their officers would need to detain suspects for further investigation into criminal acts and arrest suspects for committing criminal acts. It should have also been obvious to the leadership of the Cleveland Police Department that their officers would be tasked with making decisions as to whether sufficient evidence existed to detain a suspect for further investigation into a criminal act or whether sufficient evidence existed to arrest a person for a criminal act. Because that should have been obvious to the leadership of the Cleveland Police Department, it should also have been obvious that their officers needed to be properly trained on what constitutes sufficient evidence to establish reasonable suspicion and probable cause.

Even though law enforcement officers receive instruction in basic law enforcement training programs about reasonable suspicion and are told that they must have reasonable suspicion to detain a suspect and may use reasonable force if the suspect resists detention, it is apparent from Officer Matthew Craska's deposition testimony that he was not properly trained on the concept of reasonable suspicion and did not have an adequate understanding of the concept of reasonable suspicion and the authority to detain, search, or use force against a suspect on July 4, 2011.

In response to a question from plaintiff's attorney as to whether he had reasonable suspicion to detain Ficker, Officer Craska claims that he knew that he did not have enough information to arrest Daniel Ficker for a crime (Craska deposition testimony 100 @ 8), but believed he had reasonable suspicion to do an investigative detention.

However, in response to another question, Craska claims that he did not have reasonable suspicion to detain Ficker by force (Craska deposition testimony 100 @ 11-14). Craska

also believed that he had a right to pat Ficker down (Craska deposition testimony 101 @ 25). When asked again if he had reasonable suspicion to detain Ficker, Craska again answered “no” (Craska deposition 103 @ 17).

3. The failure of the Cleveland Police Department to provide policy guidance to their officers on the limitation of their authority to take a law enforcement action outside the city limits of the City of Cleveland demonstrated a deliberate indifference to the safety of persons coming into contact with Cleveland Police Officers and was causally connected to the shooting death of Daniel Ficker by Officer Matthew Craska.

In most cases, municipal police officers aren’t allowed to make a detention or to make an arrest in any area that is outside their jurisdiction. For law enforcement officers their jurisdiction boundary covers the area where they are sworn to serve and protect as police officers. Arrests or detentions made by an officer outside the officer’s jurisdiction are generally considered illegal arrests.

Municipal law enforcement officers, including municipal law enforcement officers in Ohio are also instructed that, as a general rule, an officer only has authority to take an enforcement action within his/her primary jurisdiction unless (1) engaged in fresh pursuit of a suspect; (2) operating under a mutual-aid agreement giving the officer authority at the location outside his primary jurisdiction; or (3) witnessing a serious and life threatening crime in which the officer is generally authorized to detain a criminal suspect until an officer with jurisdiction arrives to make an arrest.

In this case, Officer Craska was outside his jurisdiction; not operating under a mutual-aid agreement with Parma; was not operating under emergency circumstances; and was not in fresh pursuit of Ficker and therefore had no authority to take a law enforcement action against Ficker.

Typically, municipal law enforcement agencies provide guidance to their officers through the publication of an administrative directive which informs their officers of their areas of jurisdiction; which agencies have concurrent law enforcement jurisdiction in their city; which areas in their city that are under the exclusive jurisdiction of other law enforcement agencies; and the limitations of their authority on property owned by their city but located outside the city limits (see as example Columbus, Ohio Police Division Directive 3.22 attached as Appendix G).

Cleveland Division of Police Chief Michael McGrath acknowledged that Cleveland police officers do not have the authority to take a law enforcement action outside the city limits of Cleveland when he stated in his deposition in this incident that “Cleveland police officers can’t go to another jurisdiction and investigate a deadly force incident there” because Cleveland officers don’t have jurisdiction to do that” (McGrath deposition 11 @ 11-14).

4. The use of deadly force against Daniel Ficker by Cleveland Police Officer Matthew Craska on July 4, 2011 was a greater level of force than other law enforcement officers would have used under the same, or similar, circumstances in 2011 and therefore was excessive and unreasonable.

Law enforcement officers are told in basic law enforcement training programs on use of force that the U.S. Supreme Court ruled that “All claims that law enforcement officers have used force – deadly or not – in the course of an arrest, investigatory stop, or other seizure...will be analyzed under the Fourth Amendment reasonableness standard.”¹

Since 1989 the standard established by the United States Supreme Court in *Graham v. Connor*, has been used in basic law enforcement training programs to instruct law enforcement officers on the use of force. Officers are told that the Court in *Graham v. Connor* stated that “the test of reasonableness requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” Further, officers are instructed in use of force training programs that the Court ruled that “the question is.... whether the totality of the circumstances justifies a particular sort of seizure.”

Finally, officers are told in use of force training programs that the officer must be able to articulate objective factors to justify a determination that a subject posed an immediate threat beyond a simple statement by the officer that he felt threatened.

In this case, when Craska told Ficker that he had to have a seat in his patrol car, Ficker refused, cursed him, and struck him with his right elbow in the breast bone (Craska deposition 139 @ 1-8). In response, Craska hit Ficker in the face with a closed fist (Craska deposition 141 @ 10-15).

According to Craska, he then got Ficker in an arm bar and took him to the ground and told him he was under arrest (Craska deposition 140 @ 12-18).

However, according to Craska, Ficker was able to get back up on his feet and back away from him (Craska deposition 145 @ 13-17). Craska then pulled out his Taser and fired it at Ficker, but Ficker pulled the Taser wires out of his chest (Craska deposition 154 @ 3-11). According to Craska, he could have used the Taser again but decided not to because he would have had to put on another cartridge (Craska deposition 155 @ 21 and 156 @ 1-2). He then told Ficker, “you’re under arrest, get on the ground” but Ficker said “Nope. Let’s go” and started fighting him again (Craska deposition n163 @ 17-22).

Following more struggling with Ficker, Craska claims that he heard Mindek say “hey, man, he’s going for your gun” (Craska deposition 169 @ 19-20). Craska claims that he felt Dan’s hand on his weapon so he knocked his hand away and put his own hand on top

of the weapon (Craska deposition 173 @ 18-20). Craska then pulled his gun out of the holster and placed it behind his back (Craska deposition 178 @ 17-19).

According to Craska, Ficker then stood up and backed up several feet. He then brought his pistol up and said “Dan, that’s it. If you try to get my gun you’re going to die (Craska deposition 179 @ 7-18).

According to Craska, Ficker got in a fighter stance again and came at him. When he was several feet from him, Craska shot him (Craska deposition 187 @ 23-35) and 188 @ 11-20).

According to Craska, he shot Ficker because he was exhausted and he could not continue to fight Ficker (Craska deposition 193 @ 7-10). Craska contends that he resorted to the use of his firearm because he could not continue to fight Ficker and he was afraid Ficker would get his firearm from him.

In this incident, Craska was not facing an immediate threat of serious bodily harm or death from Ficker at the time he shot Ficker as Ficker was unarmed and was several feet from him. In addition, Craska’s use of deadly force was based upon the hypothetical that Ficker could attempt to get his firearm from him again and if he did that he was too exhausted to stop him. Because Craska shot Ficker because of possible actions by Ficker and not actual actions by Ficker, his use of his firearm to shoot Ficker was not “objectively reasonable” and other officers would not have used their firearm under the same circumstances.

5. Officer Dave Mindek had a duty and the opportunity to intervene to prevent Officer Matthew Craska from using force against Daniel Ficker when the force was not justified and his failure to intervene demonstrated a reckless disregard for the safety and well being of Daniel Ficker and was causally connected to Ficker’s death.

In this case, the Cleveland Police Department Internal Affairs Investigation into the shooting death of Daniel Ficker by Officer Matthew Craska concluded that Officer Craska did not have evidence to make Dan Ficker a named suspect in a report (see number 7 on page 24 Cleveland Police Department Internal Affairs Investigation regarding violations of Officer Matthew Craska).

In this case, Officer Craska was outside his jurisdiction; not operating under a mutual-aid agreement; was not operating under emergency circumstances; and was not in fresh pursuit of Ficker and therefore had not authority to take a law enforcement action against Ficker.

Officer are instructed in law enforcement use of force training programs and ethics courses that they have a responsibility to stop another officer from engaging in misconduct or using force that is excessive and unjustified and that a failure to intervene to stop the offending officer will result in disciplinary action against them.

6. The failure of Cleveland Police Department Sergeant Randolph Daley to properly carry out his duties as a supervisor of Officer Matthew Craska on July 3, 2011 was causally connected to Craska eventual confrontation with Daniel Ficker in Parma, Ohio on July 4, 2011 and his use of unjustified force against Daniel Ficker which resulted in Ficker's death.

Sergeant Randolph Daley was the sergeant on duty for the Second District on the night of July 3, 2011 (Daley deposition 11 @ 19).

Sergeant Daley received a request from Officer Craska at approximately 23:37 hours on July 3, 2011 to go to 6168 Wareham Avenue in Parma, Ohio to get further information in connection with a theft that had occurred in Cleveland (Daley deposition 19 @ 17).

Although the authority of a Cleveland police officer to conduct an investigation into a criminal matter is not limited by their territorial jurisdiction,² Sergeant Daley should have, at the minimum, asked Craska (1) more details about the theft and what information he needed to gather; (2) why he needed to go to Parma (was there an immediate need for the information); and (3) whether Parma Police Department investigators could get the information for him that he needed.

Because Sergeant Daley failed to ask Craska for the minimum of information as to his request to go to Parma, Daley had no idea if he would be authorizing Craska to go into a situation that could be dangerous (Daley deposition 24 @ 22); didn't know if he would need back-up or not (Daley deposition 25 @ 5); and didn't know Craska was going to be accompanied on the trip to Parma by an off-duty Cleveland police officer that was the victim of the crime he was investigating (Daley deposition 20 @ 7).

7. The agreement of November 14, 2012, between the City of Cleveland and the Cleveland Police Patrolmen's Association (CPPA), to hold in abeyance any administrative/disciplinary proceedings against Officers David Mindek and Matthew Craska until the conclusion of the litigation in this case, demonstrates a deliberate indifference to the safety and well being of citizens of Cleveland that may come into contact with officers Mindek and Craska in the performance of their duties and demonstrates a failure to properly supervise Mindek and Craska (by taking timely corrective action).

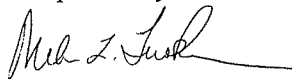
In this case, the Cleveland Police Department Internal Affairs Investigation into the shooting death of Daniel Ficker by Officer Matthew Craska concluded that Officer Craska did not have evidence to make Dan Ficker a named suspect in a report (see number 7 on page 24 Cleveland Police Department Internal Affairs Investigation regarding violations of Officer Matthew Craska).

In this case, the City of Cleveland Police Department Internal Affairs investigation into the shooting death of Daniel Ficker found that (1) Officer Mindek did not report the crime that occurred at his home through the dispatch system non-emergency line; (2) Officer Mindek, while off-duty, took an active role in investigating his own crime

complaint utilizing city resources; and (3) Officer Mindek went to Parma, Ohio to confront a suspect in a crime and failed to notify Parma Police regarding the nature of his activity and his location (see page 35 of Cleveland Police Department Internal Affairs Investigation regarding violations of standards Mindek committed).

In this case, the City of Cleveland, through its representative Jon M. Dileno, Esquire, agreed to hold off taking any corrective action against P.O. Mindek and P.O. Craska until the conclusion of the litigation in this matter (Letter from Jon M. Dileno to Pat D'Angelo dated 11-14-12 attached as Appendix H).

Respectfully Submitted



Melvin L. Tucker
December 9, 2013

¹ *Graham v. Connor*, 490 U.S. 386 (1989)

² *State v. Dotson*, 35 Ohio App. 3d 135 (1987)

APPENDIX A

Appendix A

MELVIN L. TUCKER
Criminal Justice and Security Consultant/Trainer
5929 Fordland Drive
Raleigh, North Carolina 27606

mtucker50@nc.rr.com
www.policeproceduresexpert.com

CURRICULUM VITAE

EMPLOYMENT

- Litigation Consultant and Law Enforcement/Security Trainer 1994 – Present

ELECTED OFFICE EXPERIENCE

- Councilmember, City of Morristown, Tennessee 2005 - 2008

CRIMINAL JUSTICE EXPERIENCE

- Project Manager; Maine Community Policing Institute; Augusta, ME, 2000-2004
- Chief of Police, Tallahassee, FL, 1979 - 1994
- Chief of Police, Asheville, NC, 1977 - 1979
- Chief of Police, Hickory, NC, 1974 - 1977
- Chief of Police and Public Safety Director, Morristown, TN, 1971 - 1974
- Special Agent, Federal Bureau of Investigation, 1969 – 1971

MILITARY EXPERIENCE

- United States Navy Reserve, Active Duty 1965-1969, Ensign to Lieutenant
- United States Navy Reserve, Reserve Duty 1969-1988. Lieutenant to Commander

EDUCATION

- MPA - Public Administration, Appalachian State University; Boone, NC, 1977
- BA - Business Management, University of South Florida; Tampa, FL, 1965

ACADEMIC APPOINTMENTS

- The University of Maine at Augusta; Augusta, ME; Adjunct, Criminal Justice, 2000-2004
- Florida A&M University; Tallahassee, FL; Adjunct, Criminal Justice, 1981-1994

- Florida State University; Tallahassee; FL; Adjunct, Criminal Justice, 1984
- Tallahassee Community College; Tallahassee, FL; Adjunct, Criminal Justice, 1983-1984
- Western Carolina University; Cullowhee, NC; Adjunct, Criminal Justice, 1978-1979
- Walters State Community College; Morristown, TN; Adjunct, Criminal Justice, 1972-1974

PUBLICATIONS

Books

- Wecht, Cyril; Lee, Henry; Van Blaricom, D.P.; and Tucker, Melvin; *Investigation and Prevention of Officer-Involved Deaths*, CRC Press, 2010

Articles

- Merritt, J., Adams, R., Tucker, M., & McGuinness, J., *Law Enforcement Officer Association Political Candidate Endorsements*, The National Trooper Magazine, October 2012 Issue
- McGuinness, M., & Tucker, M., *Staying out of Trouble and Defending Yourself*, The Blue Review, Issue 5, 2010
- Tucker, M., *The Value of an Expert Witness in Police Litigation*, The Blue Review, Issue 4, 2009
- Tucker, M. & Wisecarver C., *Legal Authority for Preemptive Action*, The Tactical Edge, Spring 2008 Issue
- Overholt, Roger, Tucker, Melvin & Wisecarver, Chris, *Procedural Due Process and the Determination of Just Cause*, The Police Chief, Vol. LXXV, Number 1, January 2008
- Wisecarver, Chris & Tucker, Melvin, *The Force Science Reactionary Gap*, Law and Order, Vol. 55, No.8, September 2007.
- McGuinness, M & Tucker, M., *Police Use of Force: Federal and Colorado Standards*, The Colorado Lawyer, Vol. 36, No. 5, May 2007.
- Tucker, M., *Officer Involved Shootings—Where and When it Happened Matters*, The Tactical Edge, Winter 2007 Issue.
- Tucker, M., *On Liars, Mistletoe and Lack of Respect for Colleagues*, Guest Editorial, The Police Marksman, November/December 2006 Issue.
- Tucker, M., *Poor Training: The Real Story Behind The Headlines*, The Law Enforcement Trainer, Oct/Nov/Dec 2005 Issue.
- Tucker, M., *The Selection Process and the Role of Leadership*, Integrity Talk, International Association of Ethics Instructors, Vol. 5, Issue 2, Summer 2003
- Tucker, M. & Mears, R., *High Risk Police Operations Manual*, Augusta, ME, 10-01
- Tucker, M. & Mears, R., *The Investigation of Police Officers And The Fifth Amendment*, Maine Law Officer's Bulletin No. 21, Augusta, ME, 9-01
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- Tucker, M., *Constitutional Rights of Public Employees in a Para-Military Organization*, Quality Cities, 1-94

- Tucker, M., *Crime Prevention Through Environmental Design (CPTED): The Tallahassee Model*, The Police Chief, Alexandria, VA, 10-93
- Tucker, M., *That Looming Reporter: Coping With a Cantankerous Press*, The Florida Police Chief, Tallahassee, FL, 11-91
- Tucker, M., *Military Joins the Drug Fight*, The Florida Police Chief, Tallahassee, FL, 8-90
- Willingham, Mark & Tucker, M., *Ethics and Values Training: A Multifaceted Approach*, The Police Chief, Alexandria, VA, 11-88
- Tucker, M., *Crack Squad Not Enough*, The Police Chief, Alexandria, VA, 6-88
- Kleman, Daniel A. & Tucker, M., *How to Build an Effective Working Relationship: The Manager/Police Chief Relationship*, Public Management, Tallahassee, FL, 6-88
- Tucker, M., *The Consequences of Liberalizing Gun Laws*, The Police Chief, Alexandria, VA, 3-88
- Tucker, Kimberly J. & Tucker, M., *How to Avoid Becoming a Defendant in a Civil Suit* (Part 2), The Florida Police Chief, Tallahassee, FL, 5-85
- Tucker, Kimberly J. & Tucker, M., *How to Avoid Becoming a Defendant in a Civil Suit* (Part 1), The Florida Police Chief, Tallahassee, FL, 4-85
- Tucker, M., *Law Enforcement Accreditation: It's about Time*, The Florida Police Chief, Tallahassee, FL, 3-85
- Hyder, Alan K. & Tucker, M., *Efficiency in Police Services: Traffic, Law And Order*, Wilmette, IL, 6-79
- Tucker, M. & Bumgarner, B.L., *Attaining Public Confidence – The Police Department's Role*, The Administrator, Vol. IV, No. 1, 4-79
- Bumgarner, B.L. & Tucker, M., *Attaining Public Credibility Through Open Access*, The Administrator, North Carolina City and County Management Association, 1-79
- Tucker, M., *The Police Administrator and Affirmative Action*, Southern City, Tallahassee, FL, 1-79
- Tucker, M. & Hyder, Alan K., *Some Practical Considerations in Law Enforcement Education*, North Carolina Police Officer (Reprinted), 5-79
- Tucker, M., *The Problem Solving Task Force: Use of Participatory Management Methodology*, The North Carolina Justice Academy Reporter, 8-79
- Tucker, M. & Hyder, Alan, *Some Practical Considerations in Law Enforcement Education*, The Police Chief, Alexandria, VA, 8-78
- Tucker, M., *Zeroing in on Police Productivity*, North Carolina Police Officer, 7-77
- Tucker, M. & Hyder, Alan, *The Compact Police Car*, Southern City, 10-76
- Tucker, M., *The New Breed Police Chief* (Reprinted), Carolina Law And Order, 9-76
- Tucker, M., *The New Breed Police Chief*, The North Carolina Justice Academy Reporter, 8-76, Alexandria, VA
- Hyder, Alan K. & Tucker, M., *Economic Realities Force Effective Manpower Utilization*, The Police Chief, Alexandria, VA, 4-76
- Tucker, M., *Fostering Inefficiency Through LEAA Grants*, Western Piedmont Government News, 12-75
- Tucker, M., *The New Breed of Police Officer*, The North Carolina Justice Academy Reporter, 12-75

PROFESSIONAL AFFILIATIONS

- International Law Enforcement Educators and Trainers Association (ILEETA)
- National Tactical Officers Association (NTOA)
- American Society of Law Enforcement Trainers (ASLET)
- American Society for Industrial Security (ASIS)
- Police Executive Research Forum (PERF)
- International Association of Chiefs of Police (IACP)
- Maine Chiefs of Police Association (MCPA)
- Florida Department of Business Regulation, Hotels and Restaurants Security Task Force
- Florida Juvenile Justice Center; Commissioner
- Florida Police Chiefs' Association Ethics Committee
- State of Florida Technical Committee for Public Service Education
- Florida District 2, State Emergency Response Commission
- Advisory Board, Florida Criminal Justice Information System (CJIS)
- Advisory Board, Florida Interagency Narcotics Information Network (FININ)
- Florida Criminal Justice Standards and Training Commission; Vice-Chairman
- Florida Governor's Task Force on Law Enforcement
- Florida Police Chiefs Association (FPCA)
- North Carolina Governor's Crime Prevention Commission
- North Carolina Association of Chiefs of Police; Vice-President
- North Carolina Criminal Justice Education and Training Council; Chairman
- North Carolina Association of Chiefs of Police; Secretary-Treasurer
- North Carolina Governor's Law and Order Commission
- Technical Advisory Committee, University of North Carolina, Charlotte

CERTIFICATIONS

- S&W 9MM Semi-Automatic
- Monadnock PR-24 Baton Basic
- Monadnock Expandable Baton Advanced
- Advanced M-26 and X-26 Taser
- Oleoresin Capsicum (OC)
- Police Defensive Tactics
- Law Enforcement Trainer (CLET), American Society for Law Enforcement Trainers (ASLET)
- Law Enforcement Ethics Instructor, National Institute of Ethics (NIE)
- Certified Protection Professional (CPP), American Society for Industrial Security 1998-2001
- Law Enforcement Certificate, State of Florida 1979-1994
- Advanced Law Enforcement Certificate, State of North Carolina 1974-1979
- Jail Operations Certificate, State of North Carolina 1974-1977
- Law Enforcement Certificate, State of Tennessee 1971-1974

AWARDS AND RECOGNITIONS

- *First Place Award; Use of Force Academic Test*, 14th Annual Seminar, American Society for Law Enforcement Training (ASLET); Orlando, FL, 2-01
- *Outstanding Public Administrator*, North Florida Chapter of the American Society Of Public Administration (ASPA), 4-93
- *Writing Excellence Award* for article, That Looming Reporter: Coping With a Cantankerous Press, Charles G. Wellborn Foundation, 10-92
- *Service Award*, Glenn Terrell Foundation, Tallahassee, FL, 5-90
- *President's Service Award*, United Way, Tallahassee, FL, 5-83
- *Freedom Award*, NAACP, Tallahassee, FL, 5-81
- *Service Award*, North Carolina Attorney General's Office, 12-79
- *Appreciation Award*, U.S. Secret Service, Tallahassee, FL, 9-79
- *Tennessee Law Enforcement Officer of the Year*, TN 1972

LAW ENFORCEMENT AND SECURITY TRAINING AND CONSULTING

Since 1994, Chief Tucker has been training law enforcement officers in personnel issues, high-risk operations, conducting security surveys for businesses and government agencies, conducting agency evaluations, providing criminal justice and security consulting services and providing litigation support as an expert in police and security matters for both defense and plaintiffs.

LITIGATION SUPPORT SERVICES

Chief Tucker has been retained in approximately 500 law enforcement and security cases. He has testified as an expert approximately 75 times in the following areas:

- Negligent hiring, retention, assignment, training, and supervision
- Use of less than lethal and lethal force
- Emergency vehicle operations
- Premises liability
- Security Guard negligence
- Reasonable accommodation
- Free speech
- Probable cause/ reasonable suspicion
- Police personnel practices, officer conduct
- Race and sex discrimination
- Proper police procedures, criminal investigations

He has provided litigation services in:

Alabama	Alaska	Arizona	Arkansas
California	Canada	Colorado	Connecticut
District of Columbia	Florida	Georgia	Illinois
Kentucky	Louisiana	Maine	Maryland
Massachusetts	Michigan	Mississippi	Missouri
Nebraska	New Hampshire	New Jersey	New Mexico
New York	Nevada	North Carolina	Oklahoma
Ohio	Pennsylvania	Puerto Rico	South Carolina
Tennessee	Texas	Virginia	Washington
West Virginia			

CRIMINAL JUSTICE TRAINING SERVICES

Chief Tucker conducts training seminars for officers, supervisors and managers of federal, state, county and municipal law enforcement agencies in the following areas:

- High-speed pursuit and emergency response
- Use of force
- Personnel practices
- Writing reports to reduce civil liability risk
- Legal and professional standards regulating police high-risk operations
- Auditing operations to reduce civil liability risk
- Civil liability awareness
- Standards for discipline

He has provided criminal justice training for the following organizations:

- North Carolina Conference of District Attorneys, *Conducting Investigations and Evaluations of Law Enforcement Officers Use of Deadly Force*, Raleigh, NC
- North Carolina Chapter of the Southern Police Institute Alumni Association, *Career Survival*, Conover, NC
- North Carolina Criminal Defense Lawyers Association, Continuing Legal Education Seminar, Cary, NC, *The Use of Law Enforcement Expert Testimony in Criminal Cases*
- Performance Institute, Arlington, Virginia, National Summit on Use of Force in Law Enforcement, *The Legal Standards of Use of Force*
- Jefferson County, TN Sheriff's Department, *Use of Force: Legal, Professional and Ethical Standards*
- Hancock County, TN Sheriff's Department, *Use of Force: Legal, Professional and Ethical Standards*

- Hamblen County, TN Sheriff's Department, *Use of Force: Legal, Professional and Ethical Standards*
- Utah/Nevada FBI National Academy Graduates Association, *Use of Force, Standards & Threat Assessment*
- Morristown, TN Police Department, *Use of Force: Legal and Professional Standards*
- DOJ/COPS, Lewiston, Maine, *Use of Force and Investigation of Citizen Complaints*
- Houlton, Maine Police Department, *Use of Force: Legal, Professional and Ethical Standards*
- Police Executive Leadership Seminar, Lewiston, Maine, *The Police Departments Role in Homeland Security*
- Director's Conference, Regional Community Policing Institutes, Washington, D.C., *Surviving Federal Audits of Grants*
- The 13th Annual NASRO Conference, Orlando, FL, *Avoiding Liability While Serving As A School Resource Officer*
- The 2nd Annual Community Policing Conference, Washington, D.C., *Ethics and Integrity: The Selection Process*
- Augusta Police Department, Augusta, ME, *Emergency Vehicle Operations*
- Mid-Coast Police Chiefs Association, Brunswick, ME, *Ethics in Law Enforcement*
- National Troopers Coalition, Portland, ME, *Free Speech, Due Process, and Use of Force Investigations*
- Maine Department of Corrections, Charleston, ME, *Ethics and Integrity in a Corrections Setting*
- Tallahassee Police Department, Tallahassee, FL, *Writing Reports, Auditing, Training, and Understanding Concepts to Avoid Administrative and Civil Culpability*
- Pat Thomas Law Enforcement Academy, Quincy, FL; *Legal and Professional Standards Regulating Police Use of Force, Pursuit and Emergency Response*
- Bangor Theological Seminary, Bangor, ME; *Counseling Victims in Police Use of Force Cases*
- Maine Criminal Justice Academy, Vassalboro, ME; *Domestic Violence and Crimes Against the Elderly*
- Maine Mid-Coast Chief's Association, Wiscasset, ME; *High Risk Police Operations*
- Maine Mid-Coast Chief's Association, Rockland, ME; *High Risk Police Operations*
- Maine Criminal Justice Academy, Waterville, ME; *Civil Liability Awareness*
- Labor Relations Information System Seminar, Kissimmee, FL; *Standards For Discipline*
- National Expert Witness and Litigation Seminar, Hyannis, MA; *Police Use of Force*
- Labor Relations Information System, Orlando, FL; *Procedural Due Process and Just Cause*
- Maine EMS, Islesboro, ME; *Emergency Vehicle Operations*
- Public Employment Labor Relations Forum, Tampa, FL; *Constitutional Rights of Public Employees*
- Florida Department of Law Enforcement, Tallahassee, FL; *Investigating Use of Force*
- Center for Advanced Law Enforcement Studies, Tampa, FL; *Excessive and Deadly Force: Law, Policy and Investigation*
- Florida Criminal Justice Executive Institute, Ft. Lauderdale, FL; *Personnel Issues*

- MCPI Leadership 2000 Seminar, Northport, ME; *Auditing Operations to Reduce Civil Liability Risk*
- Gulf Coast Community College, Panama City, FL; *Personnel Issues in Managing a Florida Law Enforcement Agency*
- Florida Police Chiefs and Florida Criminal Justice Executive Institute Annual Seminar, Tallahassee, FL; *Civil Liability, Manpower Allocation and other Personnel Considerations*
- Florida Criminal Justice Executive Institute: Fort Pierce, FL; *Police Personnel Use, Discipline Process, and Public Official Liability*
- New River Criminal Justice Academy, Radford, VA; *Policy Issues Relating to Substance Abuse Within Criminal Justice Agencies*
- Florida Criminal Justice Executive Institute, Tallahassee, FL; *Police Personnel Management*
- Lively Criminal Justice Training Academy, Advanced Instructor Training Series: Quincy, FL; *Police Vehicle Operations, Use of Force, and Vicarious Liability Concerns for Instructors*
- Annual Florida Police Chiefs' Seminar: Tallahassee, FL; *Police Patrol, Use of Force, Police Vehicle Operations, and Police Tactical Operations*
- Iceland Police Department; Reykjavik, Iceland, *Drug investigations, interdiction, and prevention strategies*
- Florida Criminal Justice Executive Institute, St. Petersburg Junior College, St. Petersburg, FL; *Personnel Issues and High Risk Management*
- Maine Police Chiefs' Association, Houlton, ME; *Police High Risk Operations and Vicarious Liability*
- Portland Police Department, Portland, ME; *Police High Risk Operations*
- Florida Marine Patrol, Tallahassee, FL; *Police High Risk Operations*
- Bay County Community College, Panama City, FL; *Police Raids, Stakeouts, Use of Force, Vehicle Operations*
- Escambia County Sheriff's Department, Pensacola, FL; *Police High Risk Operations*
- Broward Community College, Melbourne, FL; *Police Raids, Stakeouts, Use of Force, Vehicle Operations, Hostage Situations*
- O'Connell Corporation, Washington, D.C.; *Criminal Interrogation Techniques*
- Office of the State Attorney, 6th Judicial Circuit, Key West Florida, *Consultant on Police Code of Silence*
- Hillsborough County Sheriff's Department; Tampa, FL; *Police Civil Liability Awareness/High Risk Operations*

CRIMINAL JUSTICE CONSULTING

Chief Tucker has provided criminal justice consultant services for the following organizations:

- The Associated Press, News Consultant, *Deadly Force Incidents Memphis Police*
- The Sarasota Herald-Tribune, News Consultant, *Off-Duty Officer Involved Shooting*

- The Palm Beach Post, News Consultant, *Policy Guidance, Training, Use of Less Than Lethal Weapons: Tasers*
- The Boston Globe, The Associated Press, The New York Times, The Washington Post, News Consultant, *Death of College Student by PepperBall Weapon following Red Sox Game*
- Camden and Rockport, Maine; *Efficiency/Manpower Utilization Studies of Police Departments*
- Louisville Courier-Journal; News Consultant, *Evaluation of Six Officer-Involved Shootings*
- The Florida Department of Lottery; *Review of Firearms Training and Deadly Force Policy*
- Jackson, MS; *Police Chief Selection Consultant*
- CBS program Eye to Eye With Connie Chung; News consultant, *Violence in America*
- CNN program Across America With Larry Woods; News consultant, *Drug Abuse Resistance Education*
- Cape Coral, FL; *Police Chief Selection Consultant*
- Cairo, GA; *Police Chief Selection Consultant*
- Cocoa Beach, FL Police Department; *Management Evaluation*
- Fort Walton Beach, FL; *Police Chief Selection Consultant*
- Orange City Police Department; Orange City, FL; *Management Evaluation*
- Edgewater, FL Police Department; *Management Evaluation*
- Bowling Green, KY; *Police Chief Selection Consultant*
- Hendersonville, NC; *Police Chief Selection Consultant*
- Texas League of Municipalities, Houston, TX; *Police Officer Bill Of Rights Consultant*
- U.S. Department of Justice, Nashua, NH *Race Relations and Racial Profiling*
- The Eighth Annual National Expert Witness and Litigation Seminar, Hyannis, MA *Police Use of Force: Myths and Realities*
- Labor Relations Information Personnel Issues Seminar, Orlando, FL; *Procedural Due Process and the Right to Be Heard*
- Labor Relations Information Systems Personnel Issues Seminar, Orlando, FL; *The Investigation of Police Officers and the Fifth Amendment*
- Labor Relations Information Systems Personnel Issues Seminar, Orlando, FL; *Procedural Due Process and the Determination of Just Cause*
- The American Criminal Justice Association, Pittsburgh, PA; *Police Discipline: An Innovative Process for Intra-Agency Corrective Response*

SECURITY TRAINING AND CONSULTING

During his law enforcement career Chief Tucker supervised crime prevention units in four police departments that provided security surveys of homes, businesses, and government buildings. He routinely reviewed construction plans for new businesses for compliance with the principles of crime prevention through environmental design (see *Crime Prevention Through Environmental: Design (CPTED): The Tallahassee Model, The Police Chief*, 10-93). He trained hotel, motel, and restaurant/lounge managers and

apartment complex managers on crime prevention techniques, conducting security surveys, and calculating the risk of crime on their property. He served on the Florida Hotel, Motel, and Restaurants Security Task Force providing crime prevention techniques for the Task Force bulletin. He taught crime prevention strategies, concepts, and techniques at the university level as an adjunct faculty member. He also served on the North Carolina Governor's Crime Prevention Commission. In December 2002 he received training in Tel-Aviv, Israel from the Israeli Security Agency (ISA) on airport/airline security, threat assessment, doctrine development, and training requirements. A member of the American Society for Industrial Security (ASIS) and a former Certified Protection Professional (CPP), he has provided security consulting services and security training for the following organizations:

- Walters State Community College, Morristown, TN, *Campus Security Awareness*
- Consortium of Security Professionals, Chicago O'Hare Airport, *Security in a Mass-Transportation Environment/Role of State and Local Police in Homeland Security*
- Maine Post-Secondary Educational Institutions Security Directors Conference, Augusta, ME, *Campus Security*
- University of Maine Center Directors Conference, Augusta, ME, *Premises Liability Concepts, Risks Identification, Security Protocols*
- State of Maine Campus Security Summit, Colby College, Waterville, ME, *Campus Security Risks Assessments, Programs and Audits*
- Gardiner, ME Boys and Girls Club, *Security Evaluation*
- Seeds of Peace Center, Otisfield, ME, *Security Evaluation in preparation for Israeli/Palestinian youth conference*
- Florida Department of Management Services, Division of Facilities Management, Tallahassee, FL, *Security, Safety & Premises Liability*
- Latitude 44/Longitude 69 Restaurant, Islesboro, Maine, *Security Survey of Facility*
- The Florida Department of Revenue; Tallahassee, FL, *Security Survey of Facilities*, Miami, Tampa, and Clearwater offices
- Academy of Florida Trial Lawyers, Premises Liability Seminar, Tampa, FL; *The Role of Law Enforcement in Crime Prevention on Private Property*
- National Crime Prevention Institute, Reykjavik, Iceland; *Crime Prevention in the Future*
- Brett and DeHaven, Tallahassee, FL; *Security Survey of The Highpoint Center Office Complex*
- Florida Hotel & Motel Association, Tallahassee, FL; *Avoiding Liability in Premises Security*

APPENDIX B

Appendix B

Melvin L. Tucker
Deposition/Trial Testimony

1. Jonathan Mark Ruiz v. Town of Indian Shores and Officer John Wiseman
United States District Court
Middle District of Florida
Tampa Division
CIVIL NO.: DKDP 050689
Trial/Defense
2. Maurice's Jewelers, Inc. v. Wexler Insurance Agency, et al
Circuit Court, 11th Judicial Circuit
Miami-Dade County, Florida
Case No.: 01-11703 GA 21
Trial/Plaintiff
3. Ideliz Torres v. BP Products North America, Inc.
Circuit Court Fifteenth Judicial Circuit
Palm Beach County, Florida
CASE NO.: 50-2008 ca 010252 XXXXX MB AB
Deposition/Defense
4. Bridget Gordon v. Kevin Beary, et al
United States District Court
Middle District of Florida
Orlando Division
CASE NO.: 6:08-CV-00073-PCF-KRS
Deposition/Plaintiff
5. Lawrence Myers, Jr. and Mary Myers v. City of Plantation Police, et al.
United States District Court
Southern District of Florida
Case No. 09-CV-60193
Deposition/Defense
6. Edwin Mobley and Christine Arrant v. Eslinger, Moore, Paparo, Weippert et al
United States District Court – Middle District of Florida
Orlando Division
6:08-CV-1830-ORL-28-KRS
Deposition/Plaintiff

7. Houseman v. Robbie Morgan and Green County, TN
United States District Court – Eastern District of Tennessee
Greenville, TN
C.A. No.: 2:07-CV-262
Deposition/Plaintiff
8. Mong and Harp vs. Home Depot, U.S.A., Inc.
Circuit Court, Fifteenth Judicial Circuit
Palm Beach County, Florida
Case Number Unknown
Trial/Defense
9. Nelson v. Patterson, Anderson and Worth, City of Concord
General Court of Justice
Superior Court Division
County of Cabarrus
State of North Carolina
Case Number Unknown
Deposition/Plaintiff
10. Charles McLaughlin vs. North Carolina Highway Patrol
North Carolina Industrial Commission
Raleigh, North Carolina
I.C. DOCKET NO. TA-21371
Deposition/Plaintiff
11. James King v. City of Chester
Common Pleas Court in the County of Chester
State of South Carolina
Case No. 08-CP-12-589
Deposition/Plaintiff
12. Emily N. Jackson vs. Sheriff Carey A. Winders and Deputy Charlie T. Arnold
General Court of Justice, Superior Court Division
Wayne County, NC
08 CVS 2920
Deposition/Plaintiff
13. Lenora Jones vs. Officer Phillips and City of West Palm Beach
In The United States District Court
Southern District Of Florida
0ASE NO. 09-CV-80496-CIV-DIMITROULEAS
Deposition/Plaintiff

14. James R. Sada vs. City of Altamonte Springs, et al.
United States District Court
Middle District of Florida at Orlando
CASE NO: 6:09- cv -506 – ORL –KRS
Deposition/Plaintiff
15. Craig Ferguson v. Sheriff Ken Mascara and St. Lucie County
United States District Court
Southern District of Florida
CASE NO.: 09-14192-Civ-MARTINEZ/LYNCH
Deposition/Plaintiff
16. Rose Mary Flammia v. City of San Antonio Police Department
District Court, 288th Judicial District
Bexar County, Texas
NO. 2007-CI-07965
Deposition/Plaintiff
17. Gina Slone v. Polk County Sheriff's Office
USDC Middle District of Florida
Tampa Division
Case No. 8:09-CV-1175-T-27TGW
Deposition/Plaintiff
18. Daphne Redding v. Trooper Boulware, B.A. Hill, Lexington Sheriff and SCDPS
USDC District of South Carolina
Columbia Division
CA 0:09-0137-HFF-PJG
Deposition/Plaintiff
19. Randall Spink v. NC Highway Patrol and NC Department of Public Safety
North Carolina Industrial Commission (File TA-20273
Raleigh, North Carolina
NO. 2007-CI-07965
Deposition/Plaintiff
20. Terrence Norton v. City of South Portland
United States District Court
District of Maine
NO. 2007-CI-07965
Deposition/Plaintiff

21. Ed White v Brian Gillis and City of Helena
Superior Court of Telfair County
State of Georgia
C.A. No. 09-CV-070
Deposition/Plaintiff
22. Sherrie Mitchell v. City of Natchitoches, et al.
10th Judicial District Court
Parish of Natchitoches
State of Louisiana
C-81289 A
Trial/Plaintiff
23. Dale Monroe and Amanda Dabbs v. McNairy County
United States District Court
Western District of Tennessee at Jackson
NO. 1:07-cv-01055-JDT-sta
Deposition/Plaintiff
24. Armeria Graham and Margaret Graham v. City of Whiteville and Officer Dudley
General Court of Justice
Superior Court Division - Columbus County
State of North Carolina
Civil Action No. 10-CV-000592
Deposition/Plaintiff
25. Josie Hernandez v City of Corpus Christi
United States District Court
Southern District of Texas
Corpus Christi Division
C.A. No. 2:10-CV-186
Deposition/Plaintiff
26. Jonathan David McCoy vs. City of Columbia Police et al
United States District Court
District of South Carolina
Columbia Division
C.A. No. 3:10-132-JFA-JRM
Deposition/Plaintiff

27. Margaret Howe v. Town of North Andover, et al
United States District Court
District of Massachusetts
C.A. No. 1:10-CV-10116NMG
Deposition/Plaintiff
28. Chastity Davidson v. City of Statesville et al
United States District Court for Western District of North Carolina
Statesville Division
C.A. No. 5:10-CV-182
Deposition/Plaintiff
29. Dalton Haley v. Washington, Green and Fulton County
United States District Court
Northern District of Georgia
Atlanta Division
C.A. No. 1:11-CV-1883-TCB
Deposition/Plaintiff
30. Jack Sayegh v. William Paterson University, et al
Superior Court of New Jersey
Law Division – Passaic County
Docket No. PAS-L-1304-10
Deposition/Plaintiff
31. Joseph McAdam v. Officer Warmuskerken, Deputy Wilson, Deputy Davila, City of Ludington and County of Mason
United States District Court
Western District of Michigan
Southern Division
Case No. 1:11 – cv – 00170
Deposition/Plaintiff
32. Joanne Lose vs. Renters Paradise Realty, Inc, NJZ Enterprises, Inc
In the Circuit Court of the 11th Judicial Circuit
Miami-Dade County, Florida
Case No: 10-21450 CA 06
Deposition/Plaintiff

33. Martin Robinson v. Lt. Jerome Barrow, et al
United States District Court
Northern District of Ohio
Eastern Division
Case No: 1:11-CV-1609
Deposition/Plaintiff
34. Dwayne Allen Dail v. City of Goldsboro, et al.
United States District Court
Eastern District of North Carolina
Western Division
Case No.; 5:10 CV 451-BHO
Deposition/Plaintiff
35. Estate of Jeffrey Scot Heinze v. City of Mesa, et al.
United States District Court
District of Arizona
Case No. CVV 10-02385-PHX-SRB
Deposition/Plaintiff
36. Christopher Zamora v. City of Houston
United States District Court
Southern District of Texas
Houston Division
Civil Action No. 4:07-4510
Trial/Plaintiff
37. Matthew Olson v. Kenneth Dier, Elizabeth Morgan, Scott Goss, Robert Atkins,
Scott Barnes and Craig Buth
Middle District of Florida
Orlando Division
Case No.; 6:10-CV-01771-JA-DAB
Deposition/Plaintiff
38. Gerald Allmond v. North Carolina State Highway Patrol
North Carolina Industrial Commission
Raleigh, NC
I.C. Docket No. TA-22537
Deposition/Plaintiff

39. Robert Putnam, Debra Putnam v. Sam's Club Puerto Rico
USDC
District of Puerto Rico
C.A. No: 11-1325 (SEC)
Deposition/Defense
40. Winston Gaillard v. City of Mobile, et al
USDC
Southern District of Alabama
Civil Action No. CV-112-228-WS-N
Deposition/Plaintiff
41. Anelle Wharton (Ellis) v. Officer Brett Lampris-Tremba, et al.
Second Judicial District Court
County of Bernalillo
State of New Mexico
Civil Action No: CV-2010-06590
Deposition/Plaintiff
42. Jesus Ornelas vs. C. R. Lovewell
USDC
District of Kansas
Civil Action No. 11-2261-JAR-KMH
Deposition/Plaintiff
43. Donald Spadaro vs. City of Miramar and Broward County Sheriff's Office
United States District Court
Southern District of Florida
CA 11-61607-CIV-COHN/Seltzer
Deposition/Plaintiff
44. Veronica Lewis, Lance Lewis v. Bradenton Beach Police Department et al
United States District Court
Middle District of Florida
Tampa Division
CA No. 8:11-CV-18-T-39AEP
Trial/Defense
45. Breedlove vs Demings Orange County So et al
United States District Court
Middle District of Florida
Orlando Division
CA No. 6:11 CV 2027 – ORL – 31 KRS
Deposition/Plaintiff

46. Streater v. City of Charlotte, et al
United States District Court
Western District of North Carolina
Charlotte Division
C.A. No. 3:11 CV 548
Trial Plaintiff
47. Ellis v. Officer Brett Lamoiris-Tremba
Second Judicial District Court
County of Bernalillo
State of New Mexico
Case No. CV 2010 06590
Trial/Plaintiff
48. Anthony Caravella v. City of Miramar, et al
United States District Court
Southern District of Florida
Case No. 11-61607-CIV-COHN/Seltzer
Trial/Plaintiff
49. Leonora Macharia v City of Revere, et al.
United States District Court
District of Massachusetts
Case No. 1:09-CV-10391
Trial/Plaintiff
50. Hunter v Town of Mocksville
United States District Court
Middle District of North Carolina
Case No 1:12-cv-333
Deposition/Plaintiff
51. Alan Loehle v. Georgia DPS and City of Atlanta
State Court of Fulton County
State of Georgia
Civil Action No. 10EV011568E
Deposition/Plaintiff
52. Hollis v. City of Key West, FL
United States District Court
Southern District Of Florida
Key West Division
Civil Action 12-10013-CIV
Trial/Plaintiff

APPENDIX C

Appendix C

Materials Reviewed

1. Plaintiff's Complaint;
2. Answer of Defendant David Mindek to Plaintiffs' Complaint;
3. Answer of Defendant Matthew Craska to Plaintiffs' Complaint;
4. Order of Judge Solomon Oliver, Jr. dated August 6, 2013;
5. Cleveland Police Department Internal Affairs Unit Investigative Report dated August 30, 2012 regarding the Daniel Ficker shooting;
6. Transcript of Deposition of Matthew Craska taken May 22, 2013;
7. Letter from Jon M. Dileo, Esquire to Pat D'Angelo dated November 14, 2012 regarding delay of decision on administrative disciplinary hearing against Officers Craska and Mindek until conclusion of *Rolen et al v. City of Cleveland, et al*;
8. Cuyahoga County Trace Evidence Laboratory Examination Report dated
9. 10-/12/2011 on body of Daniel Ficker;
10. Cuyahoga County DNA Laboratory Examination Report dated 11/4/11 on body of Daniel Ficker;
11. Cuyahoga County Medical Examiner's Verdict in Case Number IN2011-01270;
12. Cleveland Internal Affairs Unit Report in Case # 2011-642;
13. Transcript of Proceedings in *State of Ohio vs. David Mindek* for dereliction of duty held Court of Common Pleas Criminal Division;
14. DVD titled *Parma Police, Ficker Case*;
15. DVD titled *Parma PD Public Records Report Re: Ficker*;
16. DVD titled *Parma PD Interview Matthew J. Craska*;
17. DVD titled *Parma PD Patrick Ehlert Interview*;
18. DVD titled *Parma PD Photos*;
19. DVD titled *Cruiser Videos- RD700*;
20. DVD titled *Parma PD Interview-Statement Tara A. O'Donnell RD 700* ;
21. DVD titled *Parma PD Robert A. Knight Interview-Statement RD 700*;
22. DVD titled *Parma PD 6168 Wareham Ficker Scene Photos 7-15-11*;
23. DVD titled *Parma PD Interview David N. Mindek RD 700*;
24. DVD titled *Parma PD Tracy A. Weldon Interview-Statement RD 700*;
25. DVD titled *Parma PD Daniel Houdis Interview-Statement RD 700*;
26. DVD titled *Parma PD James W. Smith Statement RD 700*;
27. Deposition transcript of Lieutenant Frank Bolon;
28. Deposition transcript of Sergeant Randolph Daley; and
29. Deposition transcript of Chief Michael McGrath.

30. DVD titled *Parma PD Statement –Patrick Ehlert RD 700*;
31. DVD titled *Parma PD Statement – Interview Adam T. Dovalosky RD 700*;
32. DVD titled *Parma PD Interview – Statement –Interview James P. Tabar RD 700*;
33. DVD titled *Parma PD Interview – Statement Debra A. Jeric RD 700*;
34. DVD titled *Parma PD Spotlighted Parma Police Cruiser; Video Ptl. Craska-CPD Shooting*;
35. DVD titled *Parma PD Get GO Gas Station RD 700*;
36. DVD titled *Parma PD Car 223*;
37. DVD titled *Parma PD Photos from Sgt. Dairy CPD*;
38. DVD titled *Parma PD CPD Radio 2nd District 7/31/2011*;
39. DVD titled *Parma Police Dash Cam 140*;
40. DVD titled *Parma Police 911 & 1234 Call No time stamp*;
41. DVD titled *Parma Police Phone & Radio Call Ref Death w/Time Stamp RD 700*;
42. DVD titled *Parma Police Phone and Radio Calls Ref Sudden Death RD 700*;
43. DVD titled *Parma Police Interview Tiffany Urbach RD 700*;
44. DVD titled *Parma Police Dash Cam 143*;
45. DVD titled *Parma Police Interview w/Urbach 743*;
46. DVD titled *Cuyahoga County Medical Examiners Office*;
47. DVD titled *CCRFSL Case # 2011-1004062 IN2011-01270 Daniel Ficker*; and
48. Five DVD's containing the videotaped deposition of Matthew Craska.

APPENDIX D

Appendix D

Summary of Facts Assumed for Purpose of Analysis

At approximately 11:00 pm on July 3, 2011 on-duty Cleveland Police Officer Matthew Craska received a telephone call from fellow Cleveland Police Officer Police Officer Dave Mindek.

Mindek advised Craska that he was at work and could not leave at that time so he needed Craska to go to his residence, located at 1601 Mayview, to speak to his wife Kim Mindek about a theft of items from their home earlier in the day while she was having a party to celebrate her mother's birthday.

After arriving at the Mindek residence, Officer Craska called into dispatch and advised them he was at 1601 Mayview on a possible theft/burglary incident and he needed a time and a CAD number for his report.

Shortly after Officer Craska arrived at the Mindek residence, Officer Dave Mindek, who had taken compensatory time off from his assignment, also arrived at the residence. After Craska and Mindek spoke to Kim about what had happened, they decided to go to 6168 Wareham, Parma, Ohio to see if they could get a statement from Dan Ficker who Kim Mindek had reported as the person she suspected of stealing items from the house during the party. Ficker was the boyfriend of Tiffany Urbach, a cousin of Kim Mindek.

Officer Craska then called his supervisor, Randy Daily, and got permission to go to Parma, Ohio, a distance of approximately ten miles, to conduct some follow-up investigation into the theft. He then asked Dave Mindek to go along with him to 6168 Wareham in Parma because Dave knew where Ficker's house was; could ID any stolen property that might be found; and could be his back-up officer since he was a Cleveland police officer 24 hours a day whether on duty or off duty.

After arriving at 6168 Wareham, Craska knocked on the door but got no response. As he was walking back to his zone car, Dan Ficker and Tiffany Urbach arrived by vehicle at the residence. Ficker was riding in the passenger seat.

As they were pulling in, Officers Mindek and Craska approached the car and Craska told Ficker "come over to my car real quick. I have a couple of questions for you." According to Craska, Ficker told him "no." Craska then told him "I need to pat you down" so he patted him down at his zone car. Craska then told Ficker to sit in the backseat of his zone car, but Ficker braced himself with one arm over the open door and the other arm on the roof of the zone car. According to Officer Craska, Ficker made it clear he didn't want to get in the back seat of the zone car.

According to Craska, when he told Dan Ficker "you just gotta have a seat for a second" Dan came off the car with his right elbow, spun around and struck him in the breast bone with an elbow. While both were still standing, Craska claims that he struck Ficker in the

nose with a closed fist and then took Ficker to the ground and told him “Well, now you’re under arrest.”

According to Craska, Ficker then stood up again and threw a couple of punches at him so he pulled his TASER and deployed it against Ficker. Craska claims that Ficker then backed up like the TASER was having an effect, but then pulled the prongs from his chest and threw them to the ground. He and Ficker then started to fight again.

Craska claims that during the fight Ficker “head butted” him and “grabbed his mike from his radio and used the cord to whip him with the mike.”

According to Craska, he then heard Mindek yell that “he’s going for your gun” so he knocked his hand away, drew his gun, and placed it behind his back

According to Craska, Ficker was backing up and he believed he “was going to mount another attack against him.”

According to Craska he told Ficker “if he kept going for his gun “he was going to die.” He then moved into a firing position and shot Ficker while Ficker was still several feet from him.

APPENDIX E

Appendix E

IACP National Law Enforcement Policy Center
Off-Duty Conduct: Powers of Arrest
Concepts and Issues Paper
Originally Published: May 1, 1988
Revised: October 1, 1996

I. INTRODUCTION

A. Purpose of the Document

This paper was designed to accompany the Model Policy on Off-Duty Conduct: Powers of Arrest developed by the IACP National Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide greater understanding of the developmental philosophy and implementation requirements for the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model to the requirements and circumstances of their community and their law enforcement agency.

B. Background

Traditionally, law enforcement has been considered a 24-hour-a-day responsibility. Law enforcement officers, whether on or off duty, have been expected to respond when necessary to potential or actual violations of the law, and to provide assistance, as necessary, to citizens under emergency conditions. This tradition survives today in a broad cross-section of law enforcement agencies, although in varying degrees.

Police agency policy on the scope of off-duty law enforcement responsibilities is often related to the much broader issue of manpower utilization. Departments that encourage or prefer not to restrict off-duty enforcement typically regard it as a convenient means of bolstering either real or perceived deficiencies in the ranks of sworn officers.

Simultaneously, they point to the resulting expansion of law enforcement presence in the community, and to crime prevention and enforcement advantages. Other programs, such as a take-home police car program, may be part of this overall enforcement strategy.

On the other hand, there is an ever-growing number of police departments that question the prudence of unrestrained off-duty arrest powers, and many of these departments are markedly restricting such practices. These departments generally reject arguments that broad off-duty enforcement responsibilities are supportable on a cost-benefit basis.

The increase in the types of legal actions that may be brought against municipalities and law enforcement officers over the past 25 years has produced a dramatic increase in civil litigation focused on law enforcement activity. While officers have traditionally only been held personally liable for intentional misconduct, changing legal principles have somewhat altered this, opening officers up to personal judgments for false arrest, illegal searches, excessive use of force, and abuse of authority. Many of these lawsuits have focused on the reasonableness of actions taken by off-duty officers.

Several states and municipalities have enacted legislation both to protect the officer from personal liability, and to clarify when the department itself may also be held liable under the same cause of action. In turn, law enforcement agencies have had to develop policy and procedures that specify the scope of the proper performance of duty while both on and off duty. For example, a local New York City ordinance on public employee civil liability provides for the employee's defense and indemnification by the city as follows:

At the request of the employee and upon compliance by the employee with the provisions of subdivision four of this section, the city shall provide for the defense of an employee of any agency in any civil action or proceeding in any state or federal court including actions under sections nineteen hundred eighty-one through nineteen hundred eighty-eight of title forty-two of the United States code arising out of any alleged act or omission which the corporation counsel finds occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged act or omission occurred. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the city or state or an agency of either.

The city shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim approved by the corporation counsel and the comptroller provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained; the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee" (emphasis added).¹

The New York City Police Department was thus prompted to clarify departmental policy on what off-duty enforcement activities could legitimately be deemed within the scope of employment for indemnification and defense purposes.

The increased amount of civil litigation focusing on off-duty law enforcement actions has led many officers to take a grim view of their role as public good Samaritans. For example, an article in the Washington Post questioned the advisability of off-duty arrest based on the following incident. An off-duty Washington, D.C., police officer, jogging near his Rockville, Maryland, home, responded to shouts and what he thought was a cry of "rape." He arrived at the scene and saw a person lying on the ground, and several other persons with their shirts off. The officer immediately acted to stop what he perceived to be a potential rape. As it turned out, no rape was occurring. It was merely a group of teenagers from a party. The officer was sued for assault, battery, and false imprisonment of the teenagers on the basis that the officer overstepped his authority. Thus, civil litigation has added several new factors to be considered in the cost-benefit calculus of off-duty enforcement powers.

Of equal if not greater significance, departments supporting a restriction on off-duty powers of arrest point to the high percentage of serious and fatal incidents that involve officers while enforcing laws in an off-duty capacity. About 10 to 15 percent of all police officers killed feloniously in the line of duty died while off duty, most typically while attempting to arrest armed robbers. Additionally, a significant number of homicides and police shootings in general involve off-duty officers.

These statistics should not be read so as to infer improper or unjustified police actions. Instead, they demonstrate the substantial frequency of involvement by off-duty officers in felony situations. Further, the statistics demonstrate that off-duty officers are often not well equipped to handle these already high-risk situations. Most off-duty officers lack direct emergency communication with their department, do not have immediate access to officer assistance or to essential equipment such as a shotgun, nightstick, mace, or other weapons, and are much less likely to be wearing soft body armor. In addition, non-uniformed off-duty officers have commonly been mistaken for criminal perpetrators during armed encounters, sometimes with tragic results. Yet, despite these and other disadvantages, police departments may encourage or even require off-duty police action, and police officers may, by training and tradition, feel compelled to act.

Recognizing these risks, many police agencies are adopting policies designed to reduce the exposure of off-duty police officers, both to physical danger and to the increased likelihood of civil or criminal liability lawsuits.

II. POLICY RECOMMENDATIONS

A. Legal Considerations

First, law enforcement agencies should be thoroughly familiar with those state laws, local ordinances, and case law that govern the limits of their authority. Legal jurisdiction varies substantially from one state to another and must be clearly defined for both on- and off-duty officers. Police officers within certain municipalities may have no greater off-duty arrest powers outside their appointing jurisdiction than would the ordinary citizen under common law. Other state statutes authorize state-wide arrest powers to police officers. Many states also provide broader authority to deputy sheriffs as in the cases where they act within the boundaries of a municipality located in their county. Thus, in implementing this policy, statutory authority on off-duty powers of arrest is of paramount importance.

B. Training

Police officers should be given training of both a procedural and tactical nature on making off-duty arrests. As previously noted, off-duty officers are normally at a disadvantage when making an arrest, particularly in an armed confrontation that develops spontaneously in their presence or view. Such situations are alien to most uniformed officers who are accustomed to responding to calls for service in which they frequently have time to prepare strategically and mentally for an encounter.

The high percentage of off-duty police officer homicides in armed robbery encounters is testimony to the need for such training. Individuals who are seemingly patrons or innocent bystanders, for example, have proven on frequent occasions to be accomplices to a crime. Police officers who react without tactical skills can precipitate an exchange of gunfire that may prove far more harmful than the original offense. In many cases, a police officer who is trained in observation and identification skills can be of more help in this capacity than one who attempts to make an arrest under excessively dangerous or unknown circumstances. In no case should officers be made to feel that failure to act overtly under such conditions will be regarded negatively by the department.

C. Issues

Limitations on the off-duty arrest power are a prudent means of minimizing the dangers inherent to most off-duty arrest scenarios. The model policy requires four conditions before a valid off-duty arrest can be made.

1. *No personal involvement.* The model policy prohibits officers from making such arrests where they are personally involved in the incident leading to the arrest—that is, where it involves a personal matter between the officer, his family members, or friends and other parties. The personal involvement prohibition is geared towards ascertaining whether, for liability purposes, the officer was truly acting within the scope of his employment. In addition, such scenarios present potential high-risk situations for the off-duty officer.

In determining whether an officer is acting within the scope of his employment, the focus is on whose purposes were most served by the actions. Where the officer uses his police powers for the main purpose of furthering his own interests, he is basically personally involved, or acting outside the scope of his employment.

As defined by the policy, personal involvement goes beyond situations where the officer himself becomes actively engaged in a dispute in a nonvictim manner. Personal involvement extends to the situation where the officer may be a passive observer, but a family member or a personal friend becomes involved in a dispute where an arrest may be appropriate. However, the personal involvement prohibition does not extend to situations where the officer is the victim of a crime.

Personal involvement can affect an officer's judgment and lead to false arrests or even excessive uses of

force. In essence, an abuse of authority can arise.

Example: An off-duty officer is visiting a relative's home when the relative becomes involved in an angry dispute with a neighbor. The officer intervenes in the argument and is shoved by the irate neighbor. The officer arrests the neighbor for harassment. The officer is later sued by the neighbor for false arrest.

Example: An off-duty police officer is drinking in a bar with a friend. The officer's friend becomes involved in a dispute with other patrons, all of whom have also been drinking. A brawl ensues, and the off-duty officer arrests a person who punched the friend. The officer is later sued for false arrest.

Effective police work requires dispassionate, objective analysis of the facts. Except where the officer is himself a victim of crime, off-duty officers who are personally involved in a situation should summon on-duty personnel.

2. *Certain crimes restricted.* The model policy places two restrictions on valid off-duty arrests based on the type of criminal action involved.

First, officers should be prohibited from making off-duty arrests for nonjailable offenses. Many departments limit this further by allowing such arrests only for serious felonies or misdemeanors that have been committed in the officer's presence. However, most departments agree to the soundness of a policy that at least prohibits off-duty arrests for nonjailable offenses, such as traffic offenses.

Example: While driving, an off-duty police officer becomes furious when cut off by another car on the highway. The officer decides to arrest the other driver for a traffic infraction and pulls the other motorist over, but the case is dismissed. The officer is sued for false arrest. Like other civilian drivers, an off-duty officer must put up with the sometimes aggravating driving habits of other motorists and should not use police authority to get even.

Second, the model policy prohibits off-duty arrests unless there is an immediate need to prevent a crime or to apprehend a suspect. As discussed earlier, off-duty officers are often ill-equipped to make off-duty arrests.

Example: An off-duty officer sees someone breaking into a neighbor's house. The suspect flees immediately. The officer chases the suspect and apprehends him. The suspect is injured during the arrest and sues the officer. This would be a permissible arrest, as the officer acted properly to prevent the immediate escape of a perpetrator of a serious crime, and did so without unnecessary use of force.

In all instances of true emergency—where a crime is being committed or lives or property are endangered—proper police action requires that an off-duty officer notify local police authorities as soon as possible. While a police officer is not required to make an off-duty arrest in each instance, an officer does have a duty to notify on-duty personnel in an emergency. The required action might consist of dialing 911 for assistance, noting the physical description of the offender and/or vehicle, aiding the victim, and assisting responding on-duty units.

Example: An off-duty officer encounters an assault victim who is bleeding from the head. The officer offers assistance and is told that the perpetrator is the owner of a restaurant around the corner. The victim describes him in detail and says he is still in the restaurant serving customers. Rather than calling for the assistance of on-duty, uniformed personnel, the off-duty officer immediately goes to the restaurant and arrests the suspect. There was no immediate need for the arrest in this instance because the suspect was identified and was not about to escape. A much wiser course of action for the off-duty police officer would have been to call on-duty, uniformed personnel to make the arrest.

These types of minor ordinance violations or infractions should not be enforced by the off-duty officer. Problems of this type should be referred to the police department through standard channels for proper handling. However, police officers should not be restrained from enforcement actions while employed off-duty should they witness misdemeanor or felony violations.

3. *Officer identification.* The model policy requires that before making a permitted off-duty arrest, an officer should have with him complete police identification such as a badge and police photo identification. This will greatly reduce the possibility that the officer will be mistaken as a perpetrator when on-duty officers arrive at the scene. Actual police identification will also forestall situations where the off-duty officer intervenes in a fight and is mistaken as a new assailant.

However, off-duty or undercover officers have been mistaken for perpetrators in many instances. Some of these have resulted in the use of deadly force and the death of officer(s) involved. To further protect against this possibility, some agencies pre-designate hand signals, code words, and/or colored clothing articles as "flags" to be used to on-duty uniformed personnel under these types of situations and rotate their use. It is also preferable that an officer be armed if attempting to make an arrest, whether a misdemeanor or felony is involved. Even a misdemeanor arrest can precipitate a violent response, and an unarmed officer could be placed in a dangerous position under the circumstances. There may be situations, however, where in the officer's best judgment, an arrest could be made successfully even though the officer does not have a firearm.

4. *Off-duty employment.* Finally, when engaged in off-duty employment not associated with the police department, officers should not make arrests that solely or primarily serve the interests of the employer as opposed to the public in general.

Example: A police officer who has an authorized off-duty job as an usher in a theater is summoned by the theater manager to throw someone out of the manager's office. The person resists violently, and the officer makes an arrest. The officer used police authority for the benefit of the employer, not for the benefit of the community.

III. CONCLUSION

Law enforcement officers have traditionally been considered to be on duty at all times. Changing circumstances in society have proven that this tradition can be a costly one. However, just as society changes, the law enforcement profession has changed to meet the new challenges of enforcing the law.

Modern law enforcement officers are better educated than ever before. A higher quality of training has been developed and offered more frequently. The emphasis is on enforcing the law more intelligently.

Thus, law enforcement can still be a 24-hour responsibility, but use a new definition of such off-duty responsibilities. Just as different investigative methods are appropriate to handle different types of cases more efficiently, so should certain limitations on off-duty arrest powers be considered a more efficient law enforcement method. The off-duty officer is still on duty by calling for assistance, observing the scene and the perpetrators, and interviewing the witnesses. However, the officer is following the wisest law enforcement course by not unduly jeopardizing himself and others.

Endnote

1 General Municipal Law of New York City, Art. 4, Negligence and Malfeasance Section 50-K (ed.).

Acknowledgment

The basis for the formulation of this Model Off-Duty Conduct: Powers of Arrest Policy derives from a training bulletin entitled "Civil Liability of Police Officers." The "Legal Bureau Bulletin" is prepared by the New York City Police Department, Office of the Deputy Commissioner, Legal Matters, 1 Police Plaza, #1400, New York City, NY 10038-1497.

This project was supported by Grant No. 95-DD-BX-K014 awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The Assistant Attorney General, Office of Justice Programs,

coordinates the activities of the following program offices and bureaus: the Bureau of Justice Assistance, the Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice or the International Association of Chiefs of Police.

Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this model policy incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no “model” policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors.

APPENDIX F

Appendix F

Model Policy

Subject

Field Interviews and Pat-Down Searches

Effective Date

December 1, 1995

Reference

Special Instructions

Distribution

Reevaluation Date

December 1, 1996

No. Pages

3

I. PURPOSE

The purpose of this policy is to assist officers in determining when field interviews and pat-down searches are warranted and the manner in which they must be conducted.

II. POLICY

The field interview is an important point of contact for officers in preventing and investigating criminal activity. But even when conducted with respect for involved citizens and in strict conformance with the law, it can be perceived by some as a means of police harassment or intimidation conducted in a discriminatory manner against groups or individuals. In order to maintain the effectiveness and legitimacy of this practice and to protect the safety of officers in approaching suspicious individuals, law enforcement officers shall conduct field interviews and perform pat-down searches in conformance with procedures set forth in this policy.

III. DEFINITIONS

Field Interview: The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purposes of determining the individual's identity and resolving the officer's suspicions.

Pat-Down Search: A "frisk" or external feeling of the outer garments of an individual for weapons only.

Reasonable Suspicion: Articulable facts that, within the totality of the circumstances, lead an officer to reasonably suspect that criminal activity has been, is being or is about to be committed.

IV. PROCEDURES—FIELD INTERVIEWS

A. Justification for Conducting a Field Interview

Law enforcement officers may stop individuals for the purpose of conducting a field interview only where reasonable suspicion is present. Reasonable suspicion must be more than a hunch or feeling, but need not meet the test for probable cause sufficient to make an arrest. In justifying the stop, the officer must be able to point to specific facts that, when taken together with rational inferences, reasonably warrant the stop. Such facts include, but are not limited to, the following:

1. The appearance or demeanor of an individual suggests that he is part of a criminal enterprise or is engaged in a criminal act.
2. The actions of the suspect suggest that he is engaged in a criminal activity.
3. The hour of day or night is inappropriate for the suspect's presence in the area.
4. The suspect's presence in a neighborhood or location is inappropriate.

5. The suspect is carrying a suspicious object.
6. The suspect's clothing bulges in a manner that suggests he is carrying a weapon.
7. The suspect is located in proximate time and place to the alleged crime.
8. The officer has knowledge of the suspect's prior criminal record or involvement in criminal activity.

B. Procedures for Initiating a Field Interview

Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate the stop of a suspect if he has articulable, reasonable suspicion to do so. The following guidelines shall be followed when making an authorized stop to conduct a field interview.

1. When approaching the suspect, the officer shall clearly identify himself as a law enforcement officer, if not in uniform, by announcing his identity and displaying departmental identification.
2. Officers shall be courteous at all times during the contact but maintain caution and vigilance for furtive movements to retrieve weapons, conceal or discard contraband, or other suspicious actions.
3. Before approaching more than one suspect, individual officers should determine whether the circumstances warrant a request for backup assistance and whether the contact can and should be delayed until such assistance arrives.
4. Officers shall confine their questions to those concerning the suspect's identity, place of residence and other inquiries necessary to resolve the officer's suspicions. However, in no instance shall an officer detain a suspect longer than is reasonably necessary to make these limited inquiries.
5. Officers are not required to give suspects Miranda warnings in order to conduct field interviews unless the person is in custody and about to be interrogated.
6. Suspects are not required, nor can they be compelled, to answer any questions posed during field interviews. Failure to respond to an officer's inquiries is not, in and of itself, sufficient grounds to make an arrest although it may provide sufficient justification for additional observation and investigation.

V. PROCEDURES—PAT-DOWN SEARCHES

A. Justification for Conducting Pat-Down Searches

A law enforcement officer has the right to perform a pat-down search of the outer garments of a suspect for weapons if he has been legitimately stopped with reasonable suspicion and only when the officer has a reasonable fear for his own or another person's safety. Clearly, not every field interview poses sufficient justification for conducting a pat-down search. Following are some criteria that may form the basis for establishing justification for performing a pat-down search. Officers should note that these factors are not all-inclusive—there are other factors that could or should be considered. The existence of more than one of these factors may be required in order to support reasonable suspicion for the search.

1. The type of crime suspected—particularly in crimes of violence where the use or threat of deadly weapons is involved.
2. Where more than one suspect must be handled by a single officer.
3. The hour of the day and the location or neighborhood where the stop takes place.
4. Prior knowledge of the suspect's use of force and/or propensity to carry deadly weapons.
5. The appearance and demeanor of the suspect.
6. Visual indications that suggest that the suspect is carrying a firearm or other deadly weapon.
7. The age and gender of the suspect. Whenever possible, pat-down searches should be performed by officers of the same sex.

B. Procedures for Performing a Pat-Down Search

When reasonable suspicion exists to perform a pat-down search, it should be performed with due caution, restraint and sensitivity. These searches are only justifiable and may only be performed to protect the safety of officers and others and may never be used to shakedown individuals or groups

of individuals or as a pretext for obtaining evidence. Under these circumstances, pat-down searches should be conducted in the following manner.

1. Whenever possible, pat-down searches should be conducted by at least two officers, one of whom performs the search while the other provides protective cover.
2. Because pat-down searches are cursory in nature, they should be performed with the suspect in a standing position or with hands placed against a stationary object and feet spread apart. Should a weapon be visually observed, however, a more secure search position may be used, such as the prone position.
3. In a pat-down search, officers are permitted only to externally feel the outer clothing of the suspect. Officers may not place their hands in pockets unless they feel an object that could reasonably be a weapon, such as a firearm, knife, club or other item.
4. If the suspect is carrying an object such as a handbag, suitcase, briefcase, sack or other item that may conceal a weapon, the officer should not open the item but instead place it out of the suspect's reach.
5. If the external feeling of the suspect's clothing fails to disclose evidence of a weapon, no further search may be made. If evidence of a weapon is present, an officer may retrieve that item only. If the item is a weapon the possession of which is a crime, the officer may make an arrest of the suspect and complete a full-custody search of the suspect.

C. Reporting

If after conducting a field interview there is no basis for making an arrest, the officer should record the facts of the interview and forward the documentation to the appropriate reporting authority as prescribed by departmental procedure.

This project was supported by Grant No. 95-DD-BX-K014 awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: the Bureau of Justice Assistance, the Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice or the International Association of Chiefs of Police.

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APPENDIX G

Columbus Police Division Directive	EFFECTIVE Aug. 01, 1987	NUMBER 3.22
	REVISED Jun. 30, 2010	TOTAL PAGES 4
Jurisdiction		



Cross Reference:..... 3.42, 3.51

I. Definitions

A. Concurrent Jurisdiction

Enforcement authority shared by two or more law enforcement agencies at a particular location or on a particular subject matter.

B. Exclusive Jurisdiction

Enforcement authority granted to only one law enforcement agency at a particular location or on a particular subject matter.

C. Limited Jurisdiction

Enforcement authority which is not absolute.

II. Policy Statements

A. Statement of Jurisdiction

1. Except for areas of exclusive federal jurisdiction, the Columbus Division of Police has authority to enforce City and State laws at all sites within the city corporation limits. This includes post office branches, federal and state buildings and properties, and other government buildings and properties. Sworn personnel are not relieved of the duty to take action merely because a location may be primarily serviced by another police agency.
2. The only area of exclusive federal jurisdiction within the City of Columbus is a small portion of the Defense Supply Center Columbus, 3990 E. Broad St. The majority of this location is in the City of Whitehall. As a matter of professional courtesy, the Division of Police may assist the Federal Protective Service by securing the perimeter of the property in serious situations. Columbus Police personnel shall not enter the property except in life-threatening situations.
3. Columbus Division of Police sworn personnel have limited jurisdiction on city-owned property which is used for public purpose and which is outside the corporate limits. In such areas of limited jurisdiction, sworn personnel may only arrest for felony violations. Sworn personnel may issue a citation/summons to violators who are trespassing on or damaging city-owned property. Other misdemeanor violations are not enforceable by Columbus Police personnel.

- B. Determining Geographical Boundaries
1. The **Communications Bureau** shall maintain **current** maps and other resources representing the geographical boundaries of the City of Columbus.
 2. Division personnel needing to determine if a certain location is within the corporate limits of the City of Columbus shall contact the **Communications Bureau** for clarification. The **Communications Bureau** shall be the ultimate authority in this determination.
- C. Columbus Division of Police personnel shall not take law enforcement action outside the jurisdictional limits of the City of Columbus except as provided by law and Division policy. This does not prohibit Division personnel from exercising their rights as citizens as provided by state law.
- D. Two or More Agencies Effecting an Arrest
1. The agency having jurisdiction over the location of the crime should retain custody of the prisoner.
 2. If neither agency has jurisdiction over the location of the crime, the agency having jurisdiction over the arrest location should retain custody of the prisoner.
- E. Agreements involving areas of concurrent jurisdiction have been established between the Columbus Division of Police and various agencies as follows:
1. Properties owned by Franklin County
 - a. The Franklin County Sheriff's Office shall service the following:

County Administration Building	410 South High Street
Common Pleas Court	369 South High Street
County Tower	373 South High Street
Cooper Stadium	1155 West Mound Street
Franklin County Correction Center	370 South Front Street
Franklin County Correction Center II	2460 Jackson Pike
County Garage Complex	1721 Alum Creek Drive
Integrity House	1717 Alum Creek Drive
Alum Crest	1599 Alum Creek Drive
County Extension Office	1945 Frebis Avenue
Animal Shelter	1731 Alum Creek Drive
Board of Elections Warehouse	1798 Alum Creek Drive
Maryhaven	1755 Alum Creek Drive
Juvenile Detention Center	399 South Front Street
Welfare Department	80 East Fulton Street
- Note: Even though Columbus Police may be routinely called to the above locations, the Sheriff's Office will assume final control and conduct any necessary investigations.

- b. The Columbus Division of Police shall service the following:

Municipal Court Building	375 South High Street
County Parking Garage	36 East Fulton Street
Veterans' Memorial	300 West Broad Street
County Engineer's Property	970 Dublin Road
- 2. The Ohio State University
 - a. Primary law enforcement services on the Ohio State University main campus and University Hospital East shall be provided by the Ohio State University Police.
 - b. ***When assistance is requested*** from the Ohio State University Police, Columbus Division of Police sworn personnel shall respond and provide necessary law enforcement services.
 - c. Columbus Division of Police sworn personnel shall take appropriate police action for incidents they observe and/or are dispatched to at the Ohio State University.
- 3. Columbus State Community College
 - a. ***Primary law enforcement services on the Columbus State Community College campus will be provided by the Columbus State Community College Police Department.***
 - b. ***When assistance is requested from the Columbus State Community College Police Department, Columbus Division of Police sworn personnel shall respond and provide necessary law enforcement services.***
 - c. ***Columbus Division of Police sworn personnel shall take appropriate police action for incidents they observe and/or are dispatched to at the Columbus State Community College main campus.***
- 4. State of Ohio
 - a. Police services at State of Ohio properties within the corporate limits of the City of Columbus shall be provided as follows:
 - (1) Columbus Division of Police sworn personnel shall take appropriate police action for incidents they observe ***and/or are dispatched to*** involving State properties.
 - (2) The Ohio State Highway Patrol will normally assume final control and conduct any follow-up investigations for crimes committed on State properties. Upon request by the Ohio State Highway Patrol, or if determined to be necessary by a Columbus Division of Police supervisor the rank of lieutenant or higher, the Division may conduct either a joint or separate investigation.

5. Port Columbus International Airport/Bolton Field Airport/***Rickenbacker International Airport.***
- a. Port Columbus International Airport, Bolton Field Airport, ***and Rickenbacker International Airport*** are operated by the Columbus ***Regional*** Airport Authority. Police services for these airports are provided as follows:
- (1) Port Columbus International Airport
- (a) Primary law enforcement services will be provided by the Airport Authority Police. ***Columbus Police have concurrent jurisdiction at Port Columbus.***
- (b) ***When assistance is requested*** from the Airport Authority Police, Columbus Division of Police sworn personnel shall respond and provide necessary law enforcement services.
- (c) Columbus Division of Police sworn personnel shall take appropriate police action for incidents they observe and/or are dispatched ***to at Port Columbus International Airport.***
- (2) Bolton Field Airport
- (a) Law enforcement services shall be provided by the Columbus Division of Police. ***Columbus Regional Airport Authority Police and the Franklin County Sheriff have concurrent jurisdiction with Columbus Police at Bolton Field Airport.***
- (b) For informational purposes, the Columbus Division of Police supervisor in charge of any major incident occurring at Bolton Field Airport and investigated by Division personnel shall advise the Airport Authority Police of the situation.
- (3) ***Rickenbacker International Airport***
- (a) ***The Columbus Regional Airport Authority Police and the Franklin County Sheriff have full jurisdiction at all areas of Rickenbacker International Airport. Some areas surrounding the airport are in the city of Columbus. Pursuant to agreements with those agencies, the areas in the City of Columbus will normally be serviced by the Franklin County Sheriff's office. There may be occasions when the Division of Police will be requested to respond to property within the corporate limits.***

APPENDIX H

ZASHIN & RICH CO., L.P.A.
cleveland | columbus

JON M. DILENO
jmd@zrlaw.com

November 14, 2012

Pat D'Angelo
2000 Standard Building
1370 Ontario Building
Cleveland, Ohio 44113

RE: CPPA's request to defer Craska/Mindek administrative discipline

Dear Pat:

I have been asked to represent the City of Cleveland regarding the administrative proceedings for Patrol Officers David Mindek and Matthew Craska, and I am responding regarding the Union's request to hold in abeyance the administrative/disciplinary proceedings regarding those officers.

The City accepts the Cleveland Police Patrolmen's Association's (CPPA) October 17, 2012 request to hold the City's decision whether to proceed with administrative, disciplinary charges against P.O. Craska and/or P.O. Mindek (and any related pre-disciplinary hearing(s) and arbitration(s)) in abeyance until after the conclusion of the litigation captioned *Bernadette Rolen, as Mother and Executrix of the Estate of Daniel Ficker, et al. v. City of Cleveland, et al.*, United States District Court, Northern District of Ohio, Case No. 1:12-CV-01914-SO (including, at the City's option, any related appeals). The CPPA, in turn, waives all time limits in the applicable April 1, 2010 to March 31, 2013 collective bargaining agreement (non-civilian) or that otherwise exist under any workplace policies or federal and/or Ohio law regarding initiating disciplinary proceedings, scheduling pre-disciplinary hearings, and/or imposing discipline. Please let me know in writing if the above accurately reflects the agreement of the City and the CPPA.

Sincerely,

ZASHIN & RICH CO., L.P.A.



Jon M. Dileo

JMD/tr

cc: Martin Flask
Michael McGrath
Brian Carney

attorneys at law

55 public square | 4th floor | cleveland, ohio 44113 | p: 216.696.4441 | f: 216.696.1618 | www.zrlaw.com