



FORCE SCIENCE[®] NEWS

Chuck Remsberg
Editor-in-Chief

In This Edition:

- I. Kudos to two graduates
- II. "Bullet-proofing" your statements: 6 keys to interrogation preparedness

To register for a free, direct-delivery subscription to Force Science[®] News, please visit www.forcescience.org. Articles are sent twice per month via email. For reprint or mass distribution permission, please e-mail: editor@forcescience.org

Kudos to two graduates

I. Kudos to Two Graduates

Congratulations to two graduates of the certification course in Force Science Analysis for recent recognitions of their outstanding professional contributions.

Force Science Analyst Charles Humes Jr. has been selected to receive a Distinguished Law Enforcement Training Award from the Ohio Attorney General's office. The honor will be bestowed Oct. 5 in Columbus at the annual two-day Law Enforcement Conference sponsored by AG Mike DeWine.

Humes, now retired as a sergeant from the Toledo PD, is well known in training circles for his popular officer survival presentations at the annual International Law Enforcement Educators & Trainers Assn. (ILEETA) and for his prolific writings on defensive tactics for police-oriented publications and websites.

Force Science Analyst Richard Crites has been named Top Attorney of the Year for Law Enforcement for 2016-17 by the International Assn. of Top Professionals for his "professional accomplishments, academic achievements, leadership abilities, and contributions to his community."



FORCE SCIENCE[®]
INSTITUTE

Crites, a private attorney in Springfield, MO, who specializes in police shooting cases and also serves as a deputy sheriff, estimates he has "represented and assisted well over 100 officers who have had to use deadly force in the line of duty." Among other legal victories, he won what is believed to have been the first lawsuit anywhere on behalf of an officer against individuals for assault and battery and for filing false complaints. The award will be conferred Dec. 10 at an honors ceremony in Garden City, NY.

II. "Bullet-proofing" your statements: 6 keys to interrogation preparedness

As a former head of Internal Affairs sections for a major US police department and now an FOP-approved officers' defense attorney, George Bush II speaks with considerable authority when he says, "Most officers do not have a clue about the scope of their rights when they themselves are the target of an investigation."

That subject is "woefully neglected in training," he charges. "Yet officers desperately need to know how to protect themselves legally as a critical aspect of their job security," particularly in the current climate of daily criticism where activists are "out to get the police," where video captures virtually "everything cops do," and where "the filing of personnel and criminal complaints is rife" in jurisdictions large and small.

Bush told Force Science News recently, "You can't just go blindly out on the job these days thinking God will take care of you. He might be busy with another officer when you need help!"

In an effort to fill the void, Bush, a private practice attorney in Bel Air, MD, has developed a two-hour training presentation he calls "Interrogation Preparedness." He says it grew from his alarm about a high-profile case in the East in which he claims officers were "inappropriately convinced to waive their Miranda rights, their Garrity rights, and their right to counsel" and make statements about a suspect's death that were later used against them in their own criminal prosecutions.

Drawing from his course material, Bush recently pinpointed six key considerations for officers' statements after a critical incident, such as an OIS or other major use of force. "You should have these operational strategies well in mind before you need them, just as you have your vest on to hopefully stop a bullet that may come at you unexpectedly," Bush says.

His suggestions for "bullet-proofing your statements" derive from 39 years of law enforcement experience, including service as a DEA special agent in New York, as the officer in charge of IA investigations for the Los Angeles Police Dept., as lead prosecutor for LAPD's Boards of Rights, and now as a lawyer associated with the FOP Legal Defense Plan in Maryland, representing LEOs in disciplinary matters.

The purpose of these recommendations, Bush stresses, is "not to allow officers to evade accountability for their actions but to assure they get full benefit of the procedural rights they're entitled to when they conscientiously perform the job they were hired to do."

1. Limit on-scene disclosures. The only statement you're required to make as an involved officer at the scene of a shooting, for instance, is a Public Safety Statement to a supervisor. "Because of the urgent need for certain information, you don't have the right to wait for legal representation for this," Bush says, "but a lot of officers and a lot of supervisors don't know the proper scope and procedure."

First, he advises, your supervisor should officially "order" that you provide a Public Safety Statement, and if he or she fails to use that terminology you should request it. This is intended to limit the extent to which your statement can be used later as the investigation develops. (More on that in a bit.)

Questions should be narrowly limited and designed to protect evidence, address medical needs, and aid in suspect apprehension. For example:

- Is anyone injured? If so, where are they located?
- Are there any suspects at large? If so, what are their descriptions and what weapons are they armed with? Direction and mode of travel?
- Approximately how many rounds did you fire, in what direction, and from what approximate location?
- Did the suspect or any other officers fire rounds, and in what direction?
- Are you aware of any witnesses? If so, where are they?

- Are there any weapons or evidence that needs to be secured or protected?

Bush recommends typing these questions up and carrying them in your wallet for reference. "If your supervisor's queries stray markedly beyond these basics, respectfully request that you have a lawyer present before responding further," he suggests.

2. Cherry-pick your attorney. The investigation of an OIS is a potential legal minefield, and not something you should face alone. You want a "highly qualified" attorney who is "truly current" on officer rights legislation and relevant case law, "ideally, someone with a personal law enforcement background," Bush says.

"The best coaches tend to be former athletes, because they understand how the game is played. The same holds with an attorney. You want someone who understands your situation from having been on the street and knows the subtleties of police procedures and investigations, not someone who needs a course in Police 101 to get up to speed."

To best aid in your defense, he adds, you should familiarize yourself with any Officer Bill of Rights that may exist in your jurisdiction. "A statement of rights is written to protect you," he says. "Have a copy in your locker and at home. Review it periodically so it's clear in your mind. Don't wait for someone else to tell you what your rights are."

3. Restrain voluntary commentary. Watch what you say--not only to guard against making formal statements when you shouldn't but also to avoid spontaneous utterances that may come back to haunt you.

"This can be extremely hard when the adrenalin is pumping," Bush admits, "but remember: cameras with audio capability are everywhere these days, including in the hands of people who want to catch you making indiscreet or incriminating remarks or outbursts. Make sure the brakes on your brain are working. Don't voluntarily escalate a volatile situation with comments that are not absolutely necessary."

Anything you say about your case in public, including on social media, or to fellow officers or civilian friends in private conversations is subject to legal discovery and those who heard it may be called to testify. "Investigators are going to be poring over any social media you're attached to," Bush warns, "and if you've posted other inappropriate items there that are unrelated to your case, they'll see them too."

Also avoid volunteering information if you are a witness to another officer's shooting rather than the investigation's primary target. "Any witness officer should follow the same safeguards as the officer who pulled the trigger," Bush says.

As for official statements, he cautions, "Never give a voluntary statement to an investigator in a case where there is even the remotest possibility that criminal charges may eventually be filed. Don't waive any rights and don't volunteer anything."

4. Be compelled. "When a couple of suits show up with clipboards to ask questions or take a statement about a shooting you were involved in," Bush says, "you first need to establish who they are. That is, are they there as part of a criminal investigation...or an internal administrative investigation. There needs to be a clear distinction, not a one-

man-band approach that tries to cover both simultaneously.

"If criminal, with your actions or observations the focus of interest, you or your attorney should request that your Miranda rights be read into the record. You should then decline to waive those rights or to give a statement. Follow the advice of your counsel going forward. The interview is over.

"If the interview is for administrative purposes only, you want to be compelled to cooperate. Ask: 'If I refuse to answer your questions, will I be subject to discipline that could include my termination as an officer?'

"The truthful answer will be 'Yes' (by refusing, you could be fired for insubordination, if nothing else). Then after stating that you will cooperate 'for that reason and that reason alone,' you can go ahead with the interview and your official statement in the presence of your attorney,"

Bush explains: "If you are compelled to give a statement in fear of otherwise losing your job, what you say, along with evidence derived from it, cannot later be used against you in criminal proceedings regarding that case." That ground rule was established in 1967 in the landmark Supreme Court case of *Garrity v. New Jersey*."

Bush emphasizes two points that officers often are unclear about:

- For a statement to be considered compulsory, you have to be ordered to cooperate by a supervisor or investigator from your own agency, because no other department has authority over you. If an outside agency is investigating your

incident--often the case with OISs--get an order by phone if necessary from your supervisor before talking further.

- In addition to covering yourself for sit-down interviews, assure that you are being officially compelled by your agency and have your attorney with you before you participate in any walk-through of your incident with administrative investigators. Likewise, before testifying at a disciplinary hearing regarding your case, get it on record that your testimony is being compelled.

"Take investigations seriously," Bush advises. "Know your rights and think before you speak."

5. Request relevant video. Before you give a statement, your attorney should request access to all audio and video recordings related to the incident that are in your department's possession, whether from law enforcement or civilian devices, Bush says. "The argument can be made that you have a desire and a duty to be accurate and a right to use every tool available to refresh your memory for the purpose of providing as accurate a statement as possible."

If the request is denied, he says, your counsel should enter a short preamble into the official record before the interview starts, addressing you along these lines:

"As you answer the investigators' questions, please keep in mind that it is a recognized medical fact that memory is sometimes unreliable, especially in high-stress situations. Time and/or circumstances may have altered your senses, resulting in narrowed vision, auditory exclusion or distortion, false or missing memories, and confusion. Because of this, your memory

may be incomplete or erroneous regarding some details.

"It is best and most accurate to answer the questions in terms of describing your present memory or your state of mind, rather than reciting 'facts' that may be incorrect. Be sure to articulate when you are unsure of something. Do not assume anything and do not guess."

Bush explains: "Laying this foundation is important, because inconsistencies between your recollections and the video or audio recordings may otherwise be used to allege that you've deliberately given a false or misleading statement."

6. Tell the truth. "Stick with what you remember," Bush advises. "Don't try to regurgitate information you've heard from other sources, and don't knowingly give false commentary about anything, even though the truth may hurt."

"For your statements to be Garrity-insulated, they must be truthful to the best of your knowledge and recollection. Otherwise, what you've said can be used against you in a criminal case, including your prosecution for obstruction of justice."

"Most investigators want to give you a fair shake and are conscientious about your rights. But there are still those out there who try to play 'gotcha.' Don't open yourself up as a target for their tactics."

NOTE: In addition to his presentation on Interrogation Preparedness, Bush also offers practical and patrol-ready training on Search-and-Seizure law, another area with treacherous pitfalls for ill-informed officers.

For more information, he can be contacted at: (410) 569-1944 or at: justice@georgebush.lawyer

Written by Force Science Institute
2016

Visit www.forcescience.org for more information

Reprints allowed by request. For reprint clearance, please e-mail: editor@forcescience.org. To unsubscribe from these mailings, please send your request to editor@forcescience.org and you will be removed promptly.