

WEST VIRGINIA STATE POLICE ACADEMY REVIEW PANEL

REPORT OF INVESTIGATION

JULY 15, 2010

PART 1 – OVERVIEW

I. Background

On May 12, 2010, the Acting Cabinet Secretary¹ of the Department of Military Affairs and Public Safety, Joe Thornton, appointed four individuals, Ivin B. Lee, Thomas R. Tinder, Lewis G. Brewer, and Amanda J. Sluss, to serve on a West Virginia State Police Academy Incident Review Panel (hereinafter "Panel" or "the Panel"). The Panel members are not affiliated with the West Virginia State Police and have a diverse background in law enforcement, community police review, civil rights, military training, investigations, ethics and law.

The Panel was asked to review a recent incident at the State Police Academy with further direction from the Governor that the panel members should be thorough in their investigation, and arrive at their own conclusions. Secretary Thornton requested that a report, which may include advisory recommendations, be prepared for submission to the Governor not later than July 31, 2010.

II. Scope of Investigation

The Panel conducted a review of applicable West Virginia State Police Academy (hereinafter "WSPA") policies and procedures, and their implementation, examined law enforcement certification training requirements, interviewed relevant witnesses and evaluated pertinent evidence.

III. Methodology

The Panel interviewed the following witnesses:

1. J. Norbert Federspiel, Director of the Division of Criminal Justice Services and Executive Director of the Governor's Committee on Crime, Delinquency and Correction
2. First Sergeant Curtis E. Tilley, Assistant Director of Training, WSPA
3. Trooper First Class Christopher R. Holbert, WSPA
4. Sergeant Rob Petry, WSPA

¹ Secretary Thornton was subsequently appointed as Cabinet Secretary by Governor Joe Manchin III.

5. Corporal Michael A. McConihay, Charleston Police Department and Fellowship Officer, WVSPA
6. W.L. Harman, Chief of Police, Princeton, West Virginia
7. Eric Pugh, Police Officer, Princeton, West Virginia
8. William Roper, Chief of Police, Ranson, West Virginia, and President, West Virginia Chiefs of Police Association
9. W. S. Winkler, Police Officer, Princeton, West Virginia

The Panel reviewed an internal investigation report into the injury of Basic Officer Winkler conducted by the WVSPA staff immediately after the incident.

The Panel reviewed minutes of the Law Enforcement Training Subcommittee of the Governor's Committee on Crime, Delinquency and Correction from January 2009 through March 2010.

The Panel reviewed medical records and other documentation submitted by Officer Winkler.

PART 2 – FINDINGS

The WVSPA conducts a variety of law enforcement training programs. The Panel primarily focused its attention on the Basic Police Training Class, a 16-week program that provides initial law enforcement training for municipal police officers, sheriff's deputies, Division of Natural Resources Conservation Officers, armed campus police officers at state universities, and Division of Protective Services officers.² Officer W.S. Winkler of the Princeton Police Department was seriously injured on April 5, 2010 while participating in the 141st Basic Class which began on January 4, 2010 and concluded on April 23, 2010. Due to his injuries, Officer Winkler was unable to complete the Basic Class and will not be certified as a law enforcement officer until he returns to the Academy to attend those portions of the course which he missed.

The curriculum for the Basic Police Training Class consists of 835 hours.³ The curriculum presently in use was approved by

² Candidates seeking to become members of the West Virginia State Police attend a separate 30-week Cadet Training Class. Candidates who have previously completed the 16-week Basic Police Training Class must complete the full 30-week Cadet training curriculum. WVSPA staff instructors conduct training for both groups of students. However, the classes are conducted separately so that cadets and Basic Officers do not train together at any time.

³ This is a significant training commitment. For example, State Troopers in Indiana complete a comparable 878 hours of training in their police academy

the Law Enforcement Training Subcommittee of the Governor's Committee on Crime, Delinquency and Correction in January 2010.

The current curriculum for the Basic Police Training Class includes 108 hours devoted to officer survivability. This includes 46 hours of training focused on tactics and techniques and another 12 hours of scenario-based training. The curriculum also includes 68 hours of training in the mechanics of arrest, restraint and control. This involves training in the mechanics of arrest as well as the use of non-lethal force such as OC aerosol spray.⁴ As part of this program, basic officers receive 8 hours of ASP baton training.⁵ This is followed by scenario-based training which involves employing the baton to deal with a simulated assault against one officer by multiple assailants, commonly referred to as Multiple Assailant Training (hereinafter "MAT").

Sergeant Rob Petry is the WVSPA staff member designated as the Physical Training Coordinator. This includes responsibility for oversight of all defensive tactics training, including boxing and MAT. In addition to a Bachelor of Science degree in Criminal Justice from West Virginia State University, Sergeant Petry has extensive martial arts training and experience, including having completed numerous courses for instructors.

Boxing has long been included in defensive tactics training. Part of the rationale for this training involves the belief that it is better to have an officer experience being physically assaulted in a controlled training situation than to have that experience for the first time while working on the street. Trainees receive instruction that builds up to a single round of boxing against one of their peers. The instructors endeavor to match each participant with a classmate of similar stature and athletic experience.

While participating in boxing, participants are required to wear protective headgear and a protective cup, use a protective mouthpiece and wear standard boxing gloves. The activity is timed to last no more than three minutes. At least one instructor is present to act as both a referee and facilitator. Facilitation in this context may include verbal coaching and encouragement to the participants.

program. Basic Peace Officer training in neighboring Ohio involves an 18-week course.

⁴ Oleoresin Capsicum or "OC" is an aerosol spray used as a protection device, commonly referred to as "pepper spray."

⁵ "ASP" is the name of the manufacturer of the police baton that constitutes standard issue for most police agencies that employ a baton. Students who successfully complete this training receive a certification in the use of the ASP baton. Some form of baton training has been included in the WVSPA curriculum since the 1970's.

Basic Officer Winkler was matched against Basic Officer Hudson of the Dunbar Police Department.⁶ Observers reported that Basic Officer Hudson dominated the boxing activity. Sergeant Petry determined that Basic Officer Winkler performed so poorly that he needed remedial instruction. Accordingly, Sergeant Petry put on boxing gloves and engaged Basic Officer Winkler in what he described as an effort to improve the trainee's confidence.

Sergeant Petry represented that he only struck Basic Officer Winkler with "glancing blows" and allowed Winkler to strike him as part of the effort to improve his mindset. Sergeant Petry emphasized that the consistent goal of this training is for the trainee to come out with a winning attitude, not for the instructor to demonstrate his capability as a fighter. Sergeant Petry recalled having engaged in similar remedial training with one or two trainees in the past. However, he acknowledged that such instructor participation is not standard practice. Moreover, he described no criteria to follow in making the determination whether such extraordinary intervention should occur. Basic Officer Winkler reported receiving two black eyes in the course of this activity. He also experienced symptoms during the hours following this activity that are consistent with a mild concussion. He attributes the most substantial blows landing on or about his head during this exercise to Sergeant Petry.

Officer Eric Pugh of the Princeton Police Department attended the Basic Class in 2008. He suffered a concussion in the course of the boxing training.⁷ Officer Pugh stated that he was more susceptible to sustaining a concussion because he had previously suffered from a concussion. He also stated that he did not recall wearing protective headgear while engaged in the peer to peer boxing activity. Officer Pugh's injury was relatively minor, causing him to sit out some of the physical training due to a severe headache, but otherwise completing all of the course requirements for certification as a police officer. In Officer Pugh's opinion, defensive tactics training provides valuable experience that a police officer needs to work on the street.

MAT involves scenario-based training that takes place after the trainees have engaged in boxing and classroom baton instruction. This training is intended to allow the student to apply the training he or she has previously received in a realistic situation, including the appropriate use of verbal

⁶ Students in the Basic Police Training Class are referred to by the title of "Basic Officer." Similarly, students attending the Cadet Training Class for State Police Officers are referred to as "Cadet."

⁷ The West Virginia Association of Chiefs of Police has indicated concern over an inordinate number of officers being injured in the course of attending the Basic Police Training Course. Unfortunately, the Association has not conducted a poll of its membership to quantify the number of significant injuries encountered.

commands and the employment of the police baton to apply non-lethal force to eliminate a physical threat to the officer's safety. Police officers in West Virginia typically operate on patrol or respond to assistance calls individually. In some places, the nearest available officer to provide backup may be 20 or 30 miles away. Therefore, preparing an officer for a situation where the officer is required to deal with more than one assailant is believed to represent a relevant and realistic training situation. MAT has been included in the WVSPA curriculum for approximately the past 8 to 9 years.

One of the paramount concerns during this training involves the participant's safety. Accordingly, the instructors wear protective headgear, and a bulky protective suit. The instructors also wear boxing gloves. The trainees are provided with a baton that is made of plastic and covered with padding. In addition, trainees wear essentially the same equipment as during the peer to peer boxing, including protective headgear, a mouthpiece, and a protective cup.

The scenarios vary somewhat but generally involve two instructors engaging in role play as citizens who become aggressive and belligerent once the officer trainee arrives on the scene in response to a distress call. In addition to these role-playing participants, there are additional instructors present who serve in a dual role as facilitators and observers. These individuals facilitate by "coaching" the trainee on what to do while observing to verify that the training takes place safely and in accordance with established guidelines. Before the trainee enters the facility where the activity takes place, the trainee is briefed on the scenario, such as the nature of the call for police assistance and what information is known about the individuals they can expect to encounter (the role players). All participants are also provided with a code word to shout in the event anything takes place to make the activity unsafe, such as a participant losing part of his or her protective gear. Speaking this word is intended to signal a halt to all activity.

Basic Officer Winkler participated in the required MAT activity on April 5, 2010. The role players acting as multiple assailants for this particular exercise were Senior Trooper M.S. White and Conservation Officer Chad Rains from the Division of Natural Resources, who was serving as an Academy Fellowship Officer. There were three facilitators participating in this scenario, Trooper First Class C.R. Holbert, Senior Trooper J.M. Comer, and Corporal Michael McConihay from the Charleston Police Department, who is also an Academy Fellowship Officer.

Basic Officer Winkler did not fully recall the entire sequence of events that took place when he participated in the MAT scenario. However, he did not believe the role players got down on one knee after being struck with the police baton, as he was told they were going to do. Further, the activity continued

despite the temporary loss of his mouthpiece, as well as when he stated that he was unable to see. Other witnesses to the incident corroborated Officer Winkler's recollection regarding temporarily losing the mouthpiece and complaints of being unable to see. The current established procedures for conducting this training, as explained to the Panel, do not necessarily require suspension of the training exercise upon the occurrence of these events.

The MAT exercise was only halted when Officer Winkler collapsed to the padded floor of the converted hangar where this activity is conducted. Trooper First Class Holbert, who has extensive training as an emergency medical technician, primarily through the military, administered first aid and an ambulance was summoned. Basic Officer Winkler, although initially unresponsive, responded to Trooper Holbert's treatment and was able to communicate with those present. He was transported by ambulance for treatment at Thomas Memorial Hospital in South Charleston, West Virginia, and was thereafter transferred by ambulance to Cabell-Huntington Hospital in Huntington, West Virginia where he received additional medical treatment and underwent additional testing.

Basic Officer Winkler was diagnosed with a subdural hematoma that included internal bleeding. He was hospitalized at Cabell-Huntington from April 5 until April 8, 2010, initially being cared for in the intensive care unit to maintain close observation of his condition. Following discharge from Cabell-Huntington, Officer Winkler received follow-up care through Princeton Community Hospital. He remained medically disqualified from working as a police officer until June 28, 2010, when he returned to duty with the Princeton Police Department.⁸

The Panel found that the Academy and its instructional personnel generally exercised reasonable care in planning and conducting the exercise in which Basic Officer Winkler was injured. None of the participants employed tactics, maneuvers or force that was not acceptable within the established guidelines for a multiple assailant training scenario. Basic Officer Winkler did not provide the proper signal to indicate any need to terminate the training activity.⁹ However, he did state that he could not see. One of the facilitators should have stopped the exercise at that point until the activity could safely be resumed. The signal to terminate was eventually given by Trooper First Class Holbert, and all participant activity

⁸ Officer Winkler was diagnosed with scoliosis of the spine prior to attending the WVSPA. This condition did not disqualify him from participation in any of the training involved in the Basic Officer Course. It was not a contributing factor to any of the injuries he received while attending the Academy.

⁹ The Panel was not able to conclusively determine whether Officer Winkler was properly briefed by the facilitator on the use of the code word, "Timmy," as a signal to halt the activity if an unsafe situation developed.

ceased immediately thereafter. Unfortunately, this did not occur until after Basic Officer Winkler had collapsed.

PART 3 – CONCLUSIONS AND RECOMMENDATIONS

I. Factual Conclusions

Based upon all available evidence, including witness interviews, examination of policies and procedures, and review of records and witness statements, the Panel has determined as follows:

1. Basic Officer Winkler suffered a serious and temporarily disabling injury while participating in the Basic Police Training Class at the WSPA.

2. No conclusive determination can be made as to whether Basic Officer Winkler's injury was sustained during the boxing activity and became manifest during MAT activity, or if the injury was either aggravated or substantially inflicted during MAT activity.

3. Participating WSPA personnel generally operated within the currently established procedures for conducting the training activity in which Basic Officer Winkler participated, and in some segment of which he suffered a serious injury.

4. There is no compelling reason to either eliminate or severely limit self defense training, including peer boxing and simulated multiple assailant training as part of the Basic Police Training Class.

5. There are reasonable remedial measures that may be taken by WSPA to reduce the risk of further injuries to participants in the Basic Police Training Class such as those sustained by Basic Officer Winkler and other officers attending previous Basic Police Training Classes.

II. Recommended Corrective Action

It is most unfortunate that Basic Officer Winkler suffered a serious injury in the course of participating in police training. However, police work is inherently dangerous business. Law enforcement officers may be called upon to perform physically demanding and dangerous tasks at any time during their career. In order to properly prepare police officers for the dangers they are likely to confront in the scope of their employment, the training these officers are required to complete must be realistic and demanding. If the officer is unprepared to properly assess and address a

threatening situation, he or she will be unable to perform his or her sworn duty - to defend and protect the public.

Further, training in the use of the police baton as a defensive weapon involves an indispensable component of the training program that needs to be continued. Producing a police officer who can capably respond to a threat of force or violence with less than lethal force represents an important public policy statement.

Undoubtedly, it would not be in the public interest to establish an overabundance of concern for the comfort of trainees as the controlling interest when conducting training to produce able and competent law enforcement officers. The Panel finds no basis to conclude that decreasing the rigorous nature of the program would accomplish anything other than impair the effective preparation of competent law enforcement officers.

Requiring a police officer to handle a physical confrontation based solely on classroom training would be comparable to ordering a paratrooper to make a combat parachute drop after reading a training manual. Moreover, if a police department provides an officer with a weapon, and the officer uses that weapon improperly causing serious injury because the officer was not properly trained in its use, the employing police department and municipality may be held liable. *Hardeman v. Clark*, 593 F.Supp. 1285 (D.D.C. 1984). See *Beverly v. Morris*, 470 F.2d 1356 (5th Cir. 1972). See also *Kite v. Kelley*, 546 F.2d 334 (10th Cir. 1976).

Notwithstanding the necessity for conducting meaningful and realistic self-defense training, just like any segment of the training program, these activities must be conducted in a professional manner that reasonably provides for the safety of the participants, whether students or instructors. The Panel is convinced that these same salutary objectives can be accomplished without subjecting participants to unnecessary risk of injury, resulting in officers being unable to complete the training program or return to work with their employing agency. In order to attain these objectives while maintaining best practices in law enforcement training, the Panel makes the following recommendations:

1. The entire training curriculum for the WVSPA should be reviewed and validated against current requirements in the statewide law enforcement community every five years, as a minimum. This process will help to insure the level and nature of training provided to both basic officers and cadets stays relevant to the needs of the law enforcement community and is updated periodically to remain current with national developments in the field of criminal justice.

2. The structure of the Law Enforcement Training Subcommittee of the Governor's Committee on Crime, Delinquency and Correction should be modified as follows:

A. At least two members of the Subcommittee should be members at large who are not currently affiliated with any law enforcement agency at the state, county, municipal or federal level. (This would result in three "neutral" members on the Subcommittee, because the representative of the West Virginia Human Rights Commission, unlike the currently serving member, would not ordinarily have a background in police work.)

B. The position as Chair of the Subcommittee should be restricted to exclude the person appointed to represent the West Virginia State Police. The Panel finds that having the Chair position filled by the WVSPA Assistant Director of Training, which is the present situation, tends to generate a public perception that the Subcommittee will be obstructed from performing its independent oversight role of the training programs of the WVSPA.

C. The Subcommittee's role in overseeing the establishment and implementation of a relevant curriculum for law enforcement trainees should be more clearly delineated.

D. To the extent the recommendations set forth above in paragraphs 2A, 2B and 2C require, the Governor should either issue an executive order or sponsor legislation necessary to accomplish implementation.

3. During each MAT practical activity, one of the observers or facilitators should be designated as the safety supervisor with full and unquestioned authority to stop the exercise if a participant is injured, there is a deviation from the safety rules, one of the participants loses any part of his or her safety equipment, such as a mouthpiece, or for any reason when the person designated as safety supervisor determines, in applying his or her best judgment, that any further activity poses an unwarranted risk of injury to one or more participants. In addition, the safety supervisor, or any other instructor serving as a "referee" or "umpire," should be equipped with a whistle which they can blow to signal all participants to stop the action upon the occurrence of any such event.

4. A video recording, including audio, should be made of each participant in the boxing and MAT activities. The cameras should be located so as to document the actions of the participants from head to foot covering at least two distinct viewpoints. The video equipment should be considered as safety equipment which, if not functioning, will mandate that the scheduled training activity be postponed until such time as properly functioning video recording equipment is in place. Given that these activities only last two to three minutes at most, and the MAT scenarios in particular tend to be intensive

and fast-paced, these video recordings will permit the instructors to debrief each trainee following the exercise, explaining what the trainee did well and where he or she performed poorly, or needs to improve. This video record will also protect the instructor participants from unfounded or exaggerated allegations of trainee abuse or hazing. (The benefits of deploying in-car camera technology in police vehicles to protect officers from frivolous lawsuits, deter assaults on officers and dispel claims of racial profiling have been well documented by the U.S. Department of Justice Office of Community Oriented Policing Services (COPS). Similar video technology can be applied to enhance this training activity.) This video record should be made a part of the permanent training file for each Basic Class and retained in accordance with Academy retention practices, provided that the video record be maintained for at least two years from the end of the class.

5. Under no circumstances should an instructor participate in the peer to peer boxing activity, even if requested by a trainee. There is simply no compelling reason for an instructor to take the extraordinary step of participating in any "remedial" or "supplemental" boxing training involving an officer in the basic course. Moreover, there are no established criteria for invoking instructor involvement, leaving the instructor with no objective basis for electing to personally participate. The present situation facilitates claims of abuse or malice which can be difficult or impossible to refute.

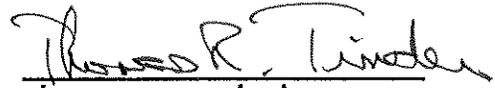
6. Participants in boxing and MAT must be required to wear all protective equipment, including headgear. The headgear should be a "full" headguard which covers the ears, such as Everlast model BX-HD-20, or the equivalent. The video recording will provide verification that participants have been outfitted in compliance with this requirement.

7. The WSPA needs to adopt a clear written policy stating the circumstances under which an officer who has missed some portion of the required training due to illness or injury: (1) will be allowed to graduate from the program and receive certification without penalty; (2) will be allowed to graduate but will not receive certification until certain missed training elements are completed; or (3) will be required to repeat the entire 16-week training course. This written policy must be

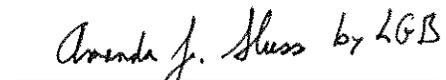
reviewed and approved by the Law Enforcement Training
Subcommittee of the Governor's Committee on Crime, Delinquency
and Correction.

Respectfully submitted,


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