

Officer Safety: Responding to Crimes Off-Duty

Title:	Officer Safety: Responding to Crimes Off-Duty
Lesson Purpose:	To familiarize the participant with the issues that need to be considered if responding to crimes in progress while off-duty.
Training Objectives:	<p>At the end of this block of instruction, the participant will be able to achieve the following objectives in accordance with the information presented during the instructional period:</p> <ol style="list-style-type: none">1. Recognize the dangers to an officer when responding to an incident while off-duty from the offender(s) as well as other responding officers.2. Evaluate the need or duty for an off-duty officer to respond to a crime in progress.3. Determine what law enforcement equipment should be carried by an off-duty officer.4. Develop an action plan for an off-duty officer to follow when responding to an incident.
Hours/Credits:	Two (2)
Instructional Method:	Lecture/Discussion
Materials Required:	Lesson Plan Pen/Pencil/Paper
References:	<p>Bella, John. "Surviving Your Off-Duty Hours." <i>Police</i>, July 2000, 50-52.</p> <p>Bertomen, Lindsey. "12 rules for off-duty conduct." <i>Law Enforcement Technology</i>, February 2006, 88-97.</p> <p>Bertomen, Lindsey. "Sort of off duty." <i>Law Enforcement Technology</i>, March 2011, 42-47.</p> <p>Bertomen, Lindsey. "Sort of off duty, Part 2." <i>Law Enforcement Technology</i>, June 2011, 66-72.</p> <p>Dowe, Darin. "Off-Duty Intervention." <i>Tactical Response</i>, September-October 2009, 84-89.</p> <p>Farb, Robert L. <i>Arrest, Search, and Investigation in North Carolina, Fourth Edition</i>. Chapel Hill, NC: School of</p>

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I. Introduction

A. Opening Statement

The law enforcement profession is not a job that one can always put aside after checking off-duty like other professions. We all have heard and even said that “a cop is a cop, 24 hours a day, 7 days a week.” What other job has that stigma about it? Law enforcement officers are subject to witnessing a crime or even becoming a victim of a crime while off-duty. Also, we are subject to coming face-to-face with a criminal that we have arrested who recognizes us. What do you do? In some cases, you may have no choice but to act; whereas in other situations, the decision to act must be evaluated.

B. Training Objectives

C. Reasons

The risks to off-duty officers are something that must be taken seriously. During this course, the dangers of off-duty incidents will be discussed. “Bullets mistakenly fired by a ‘vigilante’ citizen or an over-eager officer will kill you just as dead as those fired by a criminal.”¹ The need or duty to act to a crime in progress will be discussed as it relates to agency policy and any applicable federal and state laws. The types and quality of law enforcement equipment will be evaluated. Finally, we will develop an action plan for an off-duty officer to consider if they decide to respond to an incident.

II. Body

A. Dangers to Officers Responding to Incidents While Off-Duty

According to a Federal Bureau of Investigation (FBI) study for the time period of 2001-2010, fifty law enforcement officers were feloniously killed while in an off-duty status. During the same ten-year period, two officers were mistakenly killed responding to incidents off-duty. In 2011, two officers (one off-duty, one plainclothes) were mistakenly killed responding to incidents and in 2012 three officers (two in uniform and one in plainclothes) were mistakenly killed by other officers responding to crimes.

As you can see from the data, the risks to off-duty officers are something that must be taken seriously. Even a uniformed officer can be mistaken for, and shot as, a suspect; such was the case of Officer James Davies with Lakewood Police Department. On November 9, 2012, Davies was mistaken as an armed suspect at a “shots fired” call and was shot and killed by another officer. Keep in mind, this data only covers officers that were killed. Imagine the number of officers that were shot at and missed, shot and survived, and those

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that were saved by their body armor. If that statistic was known, it would be very scary and eye opening.

1. Off-duty assaults

The FBI reported during a ten-year period (1985-1994), one in seven officers killed were off-duty at the time of their assaults. The National Law Enforcement Officers Memorial reported that between 1989-1999, ninety-four officers were killed while they were off-duty. Thirty-nine percent of those were victims of robbery or were intervening in a robbery or robbery attempt.²

With the increasing number of citizens that have carry concealed handgun (CCH) permits, the off-duty officer needs to be aware of the potential of being challenged by a citizen. If law enforcement officers mistakenly shoot and kill off-duty officers, there is the potential that a citizen could do so as well.

2. “Blue on blue” shootings

Probably the worst thing that could happen to a department is to not only have one of their officers killed, but to have them killed by one of their own officers or an officer from another agency. “Any individual, fatal police-on-police shooting can easily traumatize and sometimes polarize an entire police department. Not only are the individual officers present at the scene affected deeply, but organization routines that normally structure an agency’s response to a shooting can be thrown into confusion as word of an officer killed spreads unevenly through a department, as other officers react with understandable emotion, and as the deepest of regrets grip everyone involved.”³ With the diversity of agencies, their size, and turnover rates, it is not uncommon for officers to not know everyone that works at their agency.

As previously mentioned, the FBI reported there were two officers killed off-duty due to mistaken identity by responding officers from 2001-2010.⁴ Even though this may seem to be an insignificant number of officers that were killed due to off-duty mistaken identity, the families of those two officers would disagree. Through his research, Christopher Stone, professor and chair of the Program in Criminal Justice Policy and Management at Harvard University, discovered there have been 28 mistaken identity fatal shootings of police officers by other officers between 1981 and 2009. His study also showed that officers of color (black and Hispanic) are at a greater risk of being mistakenly killed while off-duty and taking police action than white officers.⁵

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“Being prepared for the unexpected also means being prepared for a possible revenge assault or attempt on your life. Law enforcement officers are the targets of revenge killings every year. Almost 10% of all off-duty deaths occur because of revenge.”⁶

B. The Need or Duty to Act to Crimes in Progress While Off-Duty

The question of whether to intervene in a crime in progress while off-duty is one that should not be taken lightly. It is one that must be pondered upon very seriously, but unfortunately, only in a matter of seconds. This is one of those situations where the officer should consider in advance whether they will act within their lawful rights as a law enforcement officer if they come upon a crime in progress. Two main factors that need to be considered in making the decision are legal authority and agency policy.

1. Legal authority

A major consideration on intervening in a crime in progress while off-duty is determining whether or not the officer has the authority by law to make an arrest or detain the individual. A law enforcement officer's arrest powers are not legally restricted, even though he/she are off-duty, as long as they are in the jurisdiction and acting under “color of law.”

“Although the preferred way to make an arrest is with an arrest warrant in the officer's possession, the law recognizes several instances when an officer may arrest without a warrant.

a) Warrant or order for arrest has been issued

If law enforcement officers know that an arrest warrant has been issued for a person, whether for a felony or a misdemeanor, they may make the arrest even though they do not have the warrant in their possession.

Note: There are restrictions on entering premises to arrest, which are beyond the scope of this lesson plan.

Mere knowledge that the arrest warrant exists is sufficient to justify the arrest; no additional probable cause is needed. When making such an arrest, officers must inform the arrestee that the warrant has been issued and must later serve the warrant (or have it served) on the arrestee. Although the statute that provides this arrest authority does not explicitly permit arrest with knowledge of an outstanding order for arrest, it is likely that a court would rule that such authority exists, as a

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warrant and an order for arrest provide functionally equivalent arrest authority.

b) **Felony**

An officer may arrest without a warrant when the officer has probable cause to believe that a felony has been committed and that the person to be arrested has committed it. And it is not necessary that the felony actually have been committed (or any part of it have taken place) in the officer's presence. Thus, an officer who receives reliable information establishing probable cause that a person committed an armed robbery several months ago could arrest that person without a warrant, even though the officer did not witness the robbery. But the officer may have to obtain an arrest or search warrant, or both, if the officer needs to enter the defendant's or a third party's home to make the arrest.

c) **Misdemeanor**

Generally, an officer may make a warrantless arrest for a misdemeanor in the following circumstances:

- (1) When the officer has probable cause to believe that the person has committed a misdemeanor in the officer's presence, or
- (2) When the officer has probable cause to believe that the person has committed a misdemeanor out of the officer's presence, and also has probable cause to believe that one of the following conditions exists:
 - (a) The offender committed one of the following offenses:
 - (i) Concealment of merchandise [G.S. 14-72.1]; or
 - (ii) Impaired driving [G.S. 20-138.1]; or
 - (iii) Commercial impaired driving [G.S. 20-138.2]; or
 - (iv) Domestic criminal trespass [G.S. 14-134.3];

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(v) Simple assault or affray [G.S. 14-33(a)], Assault inflicting serious injury [G.S. 14-33(c)(1)], assault with a deadly weapon [G.S. 14-33(c)(1)], assault on a female [G.S. 14-33(c)(2)], or assault by pointing a gun [G.S. 14-34] when the offense was committed by a person with whom the alleged victim has a *personal relationship* as defined in G.S. 50B-1. A *personal relationship* includes:

- Current or former spouses;
- People of the opposite sex who live together or have lived together;
- People who are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren;
- People who have a child in common;
- People who are current or former household members;
- People of the opposite sex who are in a dating relationship or have been in a dating relationship

(vi) Violation of domestic violence protective order [G.S. 50B-4.1(a)]; or

- (b) The person will not be apprehended unless immediately arrested; or
- (c) The person may cause physical injury to himself or herself or others unless immediately arrested; or
- (d) The person may damage property unless immediately arrested.”⁷

2. Agency policy

Even if you are authorized by North Carolina state law, your agency policy may prohibit you from using your police powers in some or all situations while off-duty. Many agencies discourage officers from getting involved in situations off-duty such as civil disputes,

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shoplifting cases, and minor domestic disputes among neighbors; to name a few. Some agencies may only allow their officers to get involved in life or death situations. “The on-duty officer generally may use force to affect an arrest. The off-duty officer’s justification shifts to self-defense and protection, not enforcement.”⁸

C. Off-Duty Equipment Considerations

Even after an officer has weighed his/her duty to act according to state law and agency policy, part of the consideration must be whether they are adequately equipped to handle the situation. At a minimum, an off-duty officer should carry their firearm (in a secure holster), spare magazine/speed loader, handcuffs, handcuff key, and law enforcement credentials. They must also be adequately trained to use these in an off-duty environment.

1. Equipment

It is recommended that the following equipment be considered for off-duty carry with special consideration for each:

- a) Agency authorized weapon (size, caliber, capacity)
- b) Holster (style, security level, location of carry)

Female officers should not carry their firearm in their purse nor should a male officer have their wife or girlfriend to carry their firearm in their purse. This is due to the possibility of a purse snatching, as well as the difficulty of retrieving the firearm quickly in an emergency.

- c) Back-up weapon
- d) Credentials and badge (placement)

- (1) In 2011, the Kansas City, Missouri Police Department conducted a study on the best placement of a badge by undercover and off-duty officers. Sgt. Ward Smith, the supervisor of their firearms training section, “knows the disturbing truth: without awareness training, the average in-service officer will fire on the ‘friendly’ form before realizing it’s a fellow LEO.”⁹ Sgt. Smith concluded in his finding, “when you’re in street clothes with your gun out in an enforcement situation, where you place your badge—at your beltline or hanging from your neck—may directly affect your chances of surviving when you’re confronted by a responding officer who does not personally recognize you.”¹⁰

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“Lighting conditions were a big factor in how officers performed. But the location of the badge on the target proved to be an even bigger deterring factor as to whether these no-shoot targets were fired at or not.”¹¹

In the study, an estimated 65% of the 920 officers tested shot at least one badge-displaying target.¹²

“Overall, a no-shoot target with a belt badge was six times more likely to be shot than one with a neck badge. Even under full-light conditions, belt-badge targets were hit 1,272 times, compared to 196 hits for neck-badge targets. Under low light, belt-badge targets were hit 5,288 times, with neck-badge targets taking 843 hits. Combining both badge-placement locations, the no-shoot targets were four times more likely to be shot under low-light conditions than in a bright-light setting.”¹³

- (2) Sgt. Michael Harding with the Tactics and Survival Training Unit of the Los Angeles County Sheriff’s Department found that during force-on-force active-shooter training, the “halo” position was the most effective position for displaying a badge by off-duty and undercover officers. The roleplaying officers carried their badges on their belt, around their neck, in the hand near their weapon and in their hand up in the air. Sgt. Harding stated, “it was very concerning to find out that within the first 20 scenarios, due to the stress of the responders looking for unknown multiple armed adversaries, our plainclothes (PC) role players were misidentified as suspects and fired on an estimated 95% of the time without first being challenged. Their badges were not seen. Even when we took away the PC officers’ weapons, they were fired upon because responders identified their shooting-stance behavior and thought the badge being pointed was a gun. The most effective badge position we identified was when the PC officers held their badges high above their heads, rotating the badge to be presented in all directions, as close to 360 degrees as possible.”¹⁴
- (3) Finally and most important, if you are not going to carry your firearm off-duty, then consider not carrying your credentials and badge. On August 16, 1997, Deputy Shayne Daniel York of the Los Angeles County Sheriff’s Department was shot and later died in the hospital after being identified as a deputy sheriff during

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an armed robbery. Deputy York and his fiancée, who was also a deputy sheriff, were in a hair salon while off-duty. Two armed suspects entered the business and ordered everyone to the ground. While one of the suspects covered the patrons with a firearm, the other took their purses and wallets. When York's badge was discovered in his wallet, he was immediately shot in the head while he lay on the ground. He had not resisted the robbers in any way.¹⁵

e) Spare magazine/speed loader

“There can never be a predictable number of bullets to carry, but it's well-known, the magazines are usually the weakest link in the reliability of a firearm. If an off-duty officer doesn't have at least a magazine or a speed loader to refill the gun, he can put himself out of the fight.”¹⁶

f) Intermediate weapon (OC spray, collapsible baton, Taser, etc.)

g) Handcuffs and handcuff key

h) Communication device (portable radio, cell phone, fully-charged)

i) Flashlight (sufficient lumens of light)

j) Body armor

2. Training

There is an old saying that goes “what you do in training, you will do on the streets.” It isn't a myth; it is the truth. Have you or someone else ever tried to load their cell phone in their weapon, thinking that it was their spare magazine? The concept of muscle memory is crucial when it comes to instinctive behavior. An officer should either carry their equipment in the same general location that they do when on duty or they had better train to retrieve them from that location.

Chances are that officers will be carrying the spare magazine or handcuffs in a pants or jacket pocket when off-duty. Also, under stress, the muscle memory concept will cause the officer to manipulate the holster safety the way they have trained the most on the firing range. For that reason, it is recommended that off-duty holsters be similar in design to the on-duty type. If the officer is carrying a different weapon than their issued duty one, the same factors need to be considered.

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Another training consideration is the drawing of the firearm from a concealed position. The weapon should be covered by clothing, just as it would be on the streets. If the weapon is going to be carried in an ankle holster, then the officer should train/qualify from that location instead of qualifying with it from a hip holster.

D. Developing an Action Plan for Response

The worst possible time to develop an action plan for responding to a crime in progress is at the moment that you need it. Officers are taught to think of an action plan for dealing with a situation before they arrive on the scene and to mentally rehearse the “what if” possibilities. Just like an on-duty officer, off-duty officers should pre-plan for the possibility of becoming a witness or victim of a crime in progress. The saying “hesitation can get you killed” is very true. Action usually beats reaction; therefore, an officer needs to have an action plan in the back of their mind to put into action in a split second.

The following are issues that need to be considered by the off-duty officer in developing a response plan to an incident:

1. Clothing and other identifying items

Don't dress like a cop when off-duty. Just like law enforcement officers can pick out other officers in public, criminals can do the same thing. “Avoid those bulky fanny packs that shout ‘I’m a cop.’”¹⁷ Avoid wearing humorous “cop” t-shirts or displaying thin blue line stickers on personal or spouse’s vehicle. Avoid displaying handcuff keys and kubotans on personal key rings. Consider hidden POLICE armbands or jackets with pull-out POLICE lettering.

2. Awareness and mental preparation

Thomas Jefferson said, “Nothing can stop the man with the right mental attitude from achieving his goal; nothing on earth can help the man with the wrong mental attitude.”¹⁸ Have a realistic attitude of “not if, but when” you will come upon or be victim of a crime while off-duty. “An attitude of constant vigilance will significantly reduce vulnerability to an attack.”¹⁹ “Preparation for an off-duty incident should include four major factors: mental rehearsal, physical conditioning, mindset, and equipment.”²⁰

3. Situation assessment

“What are the chances of winning and coming out of this confrontation unscathed if I force the issue?”²¹ “Assess your chances of winning an off-duty encounter with one or more offenders. If you can't win, don't

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initiate police actions.”²² Risk management is determining if the risk is worth the gain. At that moment in time, the officer must make that determination based on the totality of the situation.

4. Family considerations

There is a chance that you may stumble upon a crime in progress while out in public with your family or run into a criminal that you have arrested while out at the movies or the mall. “Have a plan of action and discuss it with your family so they know exactly what is expected of them. We teach family members what to do in case of a fire in the home, yet we neglect to teach them what to do in the event we have to become involved off-duty.”²³ A family plan should include:

- a) They are not to tell anyone in public that you’re a law enforcement officer. One of the worst things to hear said by your child in the middle of a crime in progress is “my daddy/mommy is a police officer!”
- b) Have a code word or signal that there is a problem.
- c) Upon receiving the code word or signal, spouse or significant other should take children and quickly move away from you to a safe place behind cover away from the scene.
- d) Have spouse or significant other call 911, advising them that you are an off-duty law enforcement officer, your location, type of incident, your description and whether you are armed, and the descriptions of suspect(s), including possible weapons.
- e) Have a plan to reunite at a safe location.

5. Be a witness

One option to consider is being the best possible witness that you can without drawing attention to yourself and jeopardizing your safety. If you cannot safely take police action, this is your only viable option. Report as much information to the responding officers in order to increase the likelihood of apprehension and conviction of the suspect. Remember that if unarmed, make a subtle attempt to hide law enforcement credentials.

6. Use of cover

With the probability that an off-duty officer is not wearing body armor, cover is more critical. Challenges to suspects should be made from cover and protection from responding officers. One suggestion is

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“not to leave cover to handcuff someone. Wait until the cavalry gets there and let them take anyone into custody. Your actions are to stop the threat, to save your life or the life of another and once you have taken action, to protect the crime scene until back-up arrives.”²⁴

7. Call for back-up

From cover, call 911 to report the incident. Advise them that you are an off-duty law enforcement officer, your location, type of incident, your description and whether you are armed, and the descriptions of suspect(s), including possible weapons. Also, advise them if emergency response is needed and the current status of the situation.

8. Enforcement action

After the previously mentioned issues with in-service training at the Los Angeles County Sheriff's Department, Sgt. Harding recommends that “after engaging and conducting necessary after action procedures, immediately holster, conceal the weapon, move to cover and be prepared to “halo” your badge.²⁵ You will need to make the decision of whether to approach to handcuff or maintain your tactical advantage. The key responsibility is to prevent the serious injury or death of the parties involved. Once this is accomplished, consider restricting your further role in the situation. The officer should place themselves in the best location for the initial arrival of uniformed officers.

9. When responding officers arrive on the scene

a) The do's

“When confronted by responding officers, you should

- (1) Immediately drop your firearm
- (2) Limit your movements
- (3) Ensure both hands are visible
- (4) Verbally, repeatedly identify yourself as a police officer.”²⁶ Also repeatedly say, “don't shoot!”
- (5) “Immediately comply with all commands
- (6) Advise them where your police identification is but do not attempt to retrieve it unless told to do so.

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(7) Don't assume that they know you, should know you, or even believe you."²⁷

(8) "Do everything you are told, even if it means allowing a suspect that you have just collared to get away. Holding onto your catch is not worth dying for."²⁸

b) The do not's

(1) Do not move

(2) Do not run toward the officers

(3) Do not turn your weapon toward the officers. Turning of the head or the body can cause the weapon to move in the same direction.

(4) Do not point your badge at them. They may perceive it as a weapon.

(5) If credentials are not out and visible when officers arrive, do not reach for them unless told to do so.

(6) Do not put your weapon down within the reach of the suspect.

(7) Do not assume the officer is only giving commands to the suspect. Officers have been shot and killed, because they failed to drop their weapon when ordered to do so, thinking the officer wasn't talking to them.

III. Conclusion

A. Summary

There are many factors to consider when determining whether or not to take police action while in an off-duty status. Legal authority, severity of the crime, safety of your family, the safety of yourself and other citizens are a few of the factors that have to be considered when making a decision. Sometimes an officer may face a situation that forces them to react, where as other times, they have the discretion of taking action or being a good witness. We must remember that off-duty officers are killed every year at the hand of criminals, as well as by other officers that mistake them for criminals.

B. Questions

C. Closing Statement

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Every year, too many names of law enforcement officers are added to the North Carolina Justice Academy Memorial as well as the National Law Enforcement Officers Memorial in Washington, D.C. Don't let yourself be one of those that have your department and family question why you chose to get involved in a senseless situation or question why you were not better prepared and equipped to handle it. Stay alert for "when" you will be thrown in the middle of such a situation and have a mental plan on how to deal with it, as well as have the proper equipment and training.

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NOTES

¹ Gerald W. Garner, *High-Risk Patrol: Reducing the Danger to You, Second Edition* (Springfield, IL: Charles C. Thomas, 2011), 189.

² Michael T. Rayburn, *Advanced Patrol Tactics: Skills for Today's Street Cop* (Flushing, NY: Looseleaf Law Publications, Inc., 2001), 159.

³ Christopher Stone, "Transcript of 'Research in the Real World Seminar Series: Police-on-Police Shootings.'" National Institute of Justice (2011) [On-line] Available at: <http://www.nij.gov/multimedia/presenter/presenter-stone/data/resources/presenter-stone-transcript.htm> [July 2013].

⁴ U.S. Federal Bureau of Investigation, *Law Enforcement Officers Accidentally Killed In The Line of Duty 2001-2010* (Washington, DC: Law Enforcement Officers Killed and Assaulted Program, October 2012).

⁵ Stone.

⁶ Rayburn, *Advanced Patrol Tactics: Skills for Today's Street Cop*, 171.

⁷ Robert L. Farb, *Arrest, Search, and Investigation in North Carolina, Fourth Edition* (Chapel Hill, NC: School of Government, The University of North Carolina at Chapel Hill, 2011), 57-59.

⁸ Lindsey Bertomen, "12 rules for off-duty conduct," *Law Enforcement Technology*, February 2006, 88.

⁹ "Force Science News #215" (Mankato, MN: Force Science Institute Ltd., 2012) [On-line] Available at: <http://www.forcescience.org/fsnews/215.html> [July 2013].

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ "Force Science News #216" (Mankato, MN: Force Science Institute Ltd., 2012) [On-line] Available at: <http://www.forcescience.org/fsnews/216.html> [July 2013].

¹⁵ John Bella, "Surviving Your Off-Duty Hours," *Police*, July 2000, 51.

¹⁶ Lindsey Bertomen, "Sort of off duty, Part 2," *Law Enforcement Technology*, June 2011, 71.

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- ¹⁷ Rayburn, *Advanced Patrol Tactics: Skills for Today's Street Cop*, 168.
- ¹⁸ Lindsey Bertomen, "Sort of off duty," *Law Enforcement Technology*, March 2011, 44.
- ¹⁹ Bertomen, "12 rules for off-duty conduct," 93.
- ²⁰ Bertomen, "Sort of off duty," 44.
- ²¹ Garner, 190.
- ²² *Ibid.*, 195.
- ²³ Michael T. Rayburn "Surviving An Off-Duty Encounter," *Law & Order*, August 2000, 99.
- ²⁴ Rayburn, *Advanced Patrol Tactics: Skills for Today's Street Cop*, 163.
- ²⁵ "Force Science News #216."
- ²⁶ Darin Dowe, "Off-Duty Intervention," *Tactical Response*, September-October 2009, 89.
- ²⁷ *Ibid.*
- ²⁸ Garner, 193-194.