Fiction Becomes Reality…
Well Not Really

By Franklin R. Marino
PLEA Chairman

We have often heard the phrase “Fiction becomes reality.” Fiction, as most of us know is something that is made up. Many times, elements of fiction do become reality. In the venue of science fiction, scientific principles and technology are utilized. One example is comic strip Detective Dick Tracy, who wore a two-way wrist radio. I have never seen one but I know that with today’s technology we can view streaming video and television on cell phone screens slightly larger than Dick Tracy’s device. Conversely, many authors, particularly military and police veterans, have written fiction books, using incidents, events, and cases from their own personal backgrounds and experiences as the basis for their writings. Many times, works of fiction often evolve into television or mainstream movies.

In early January of this year, I received my official seven day notice that my work hours would be changed because my squad had to attend our annual tactical module later in the month. Since the new module cycle had just started and we didn’t know anyone who had gone through it yet, my squad didn’t know what to expect, other than we would be doing our annual handgun qualification and stun bag shotgun familiarization/qualification. We knew we would be training in the Tactical Village, but had no idea what the theme of this year’s specific tactical training was. Based on previous modules, I knew the Tactical Training Detail had done their homework and was going to have some high speed, low drag scenario/s that would help those of us who are first responders do our job safely.

After going through our safety check we entered the classroom and saw the obligatory computer, projector, and audio setup on a cart in the front of the classroom. I thought to myself, “What will it be this year…downed officer rescues, dynamic building entry, active shooter, crisis entry, or just a rehash of the basic patrol skills that we who work as first responders do every day?”

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To my shock and surprise, as our lead instructor turned on the projector, and began going through the introduction of the course, I noticed that a specific incident was mentioned, which led to the Tactical Training Detail developing this specific training outline and scenarios. The reason for my shock and surprise was that in all of the years that I have attended Tactical Module, many of the scenarios were based on real incidents which occurred in the City of Phoenix where our officers were involved. However, according the Fourth Floor, an incident which prompted this training was said to have not occurred, despite the fact there were numerous officers who were actually involved in the incident and said it did occur. The incident I am referring to was a home invasion which occurred at 8329 West Cypress Street in the Maryvale Precinct on June 23, 2008 at 0225 hours. The lone occupant of the house...
Continued from Pg. 1.

was shot and killed after approximately one hundred rounds were fired into the structure. This was no ordinary drive-by shooting as the suspects were later found to be equipped with tactical gear to include ballistic helmets, body armor with ceramic plates, and M4 rifles with Aimpoint optics and tactical light foregrips. These suspects fled the scene and were pursued into the Central City Precinct where they abandoned their Chevy Tahoe in the alley north of East McDowell Road just east of North 7th Street. A patrol lieutenant told us it was a bizarre sight to see three suspects taken into custody who were wearing black BDU pants, black boots and Phoenix Police raid shirts being led away in handcuffs by Phoenix Police Officers wearing similar uniforms. One suspect made statements that he was a member of the Mexican Military and his group was targeting drug dealers and stash houses. He also stated they were trying to lure the pursuing officers deeper into the alley (possibly to ambush them).

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By many accounts, including those of a patrol sergeant who made the station entry, a commander who entered the special duty report, and a second commander who wrote a memo commenting on the first commander’s special duty report including the statement, “…this very type of incident was predicted to arrive in Phoenix shortly…” this incident did in fact occur. Our Association President, Mark Spencer, even spoke with a local talk radio show about the incident. However, shortly afterwards on the same talk radio show, Executive Assistant Chief Andy Anderson was in spin cycle saying the incident Spencer discussed did not occur and Spencer put out bad information he was not authorized to discuss.

As with many great works of fiction, the plot twisted again, when we fast forward to February 11, 2009. Assistant Chief Andy Anderson was quoted saying “We’re in the eye of the storm” when telling ABC News of the violent crimes and ruthless tactics spurred by Mexico’s drug cartels that have expanded business across the border. A similar cry for help went out on April 20, 2009 when Chief Harris testified before a Senate Homeland security committee that effects of border violence were rippling out into our streets. His conclusion from a PDF document link found on the internet: “Border violence is a national problem. We are a local agency dealing with the symptoms which are spilling into our streets. We are on the front line dealing with this problem. This problem is seeping into other cities and towns. It must be dealt with now so that it doesn’t spread any further across America. We know our charge is to deal with the crime on our streets, but alone we cannot deal with border crossing kidnappers and home invaders. That is why I am here today asking for your help.”

The bottom line is that the training we received is a needed asset and the Tactical Training Detail did a great job putting it together. Patrol routinely deals with potentially violent situations and has to react instantly with readily available resources, often without the assistance of specialty units like SAU. It also shows the need to support a mindset change within the Department that military tactics do have a place in law enforcement under certain circumstances.

The other twist to the plot is that in this case, fiction didn’t become reality because it was never fiction to begin with. The only fiction was management’s insistence that a real and dangerous situation never occurred.
It’s important for police labor and a sitting Arizona Senator to continue to move ahead as partners in a positive forward direction to serve our citizens and our members. On Monday August 30, 2010 Pinal County Sheriff Paul Babeu requested and facilitated a meeting between PLEA (Joe Clure, Mark Spencer, Dr. Levi Bolton), Border Patrol (President Brandon Judd and Treasurer Bud Tuffy), and Senator John McCain. Because of our support, involvement, and experience with SB1070, Senator McCain requested our input in the area of illegal immigration and its impact on local law enforcement. PLEA and the Border Patrol committed to Senator McCain to provide a front-line “road map” in addressing the crime of illegal immigration at a federal level.

At this meeting PLEA shared with Senator McCain their concern over inflated kidnapping numbers that were presented to him and the nation by the City of Phoenix. PLEA explained the difference between occupants in a drop house and a kidnapping victim. Drop house occupants are passengers on a journey and co-conspirators (at least under former County Attorney Andrew Thomas’ tenure) in a crime. Drop house occupants are considered product that needs to be secured with padlocks on doors and armed guards. Drop house occupants were NOT the focus of the HIKE squad nor federal money the City of Phoenix received. There have been thousands of drop house occupants that are NOT victims but criminals arrested for violating federal immigration law. Phoenix Police management and City government presented to Senator McCain that there were at least 358 kidnappings in Phoenix in a one year period. Under the HIKE squad focus, the victims of these kidnappings were being held for ransom and involved phone monitoring, victim rescue, and extensive follow-up and manpower. The disputed annual kidnapping number in Phoenix of 358 is more likely between 50 and 100. PLEA shared with Senator McCain the allegation that the kidnapping number of 358 that was presented to him and his peers was called into question by in-house police managers and in-house police statisticians, Police management was notified of the inflated numbers prior to the presentation. The allegation of false numbers was also brought to City management’s attention over a year ago. In addition, PLEA shared with Senator McCain that Sgt. Phil Roberts reported the alleged misconduct and questionable kidnapping numbers and now appears to be a “target of retaliation” by the Phoenix Police Department. Senator McCain shared that he would have the DOJ look into the number of kidnappings in Phoenix to assure that federal money was obtained appropriately.

In addition to the full services provided to PLEA members to protect their careers, the Law Offices of Michael Napier P.C. provide the following:

**Personal injury recovery** (on or off duty); experienced representation at a reduced fee;

**Reduced fees** for matters not covered by the PLEA legal plan;

**Free probate** of officer’s estate for line-of-duty death; Free consultations to members on any matter, and

**Referrals** to attorneys or specialists for matters not handled by the firm.

**JAMES P. ABDAL** was born in Omaha, Nebraska. He earned his undergraduate degree from the University of Rochester in 1984 and his Juris Doctorate from the College of Law at Arizona State University in 1991. Mr. Abdo served as an Assistant Attorney General for Arizona before entering private practice as a partner at two major Phoenix law firms, where his practice focused on commercial litigation of all types. He has extensive experience both representing government bodies appearing before numerous state, county and city agencies in numerous licensing, procurement and labor/employment matters. His practice also includes the formation, counseling and representation of business entities, the drafting of a wide variety of real estate and other contract documents in addition to litigating disputes arising out of contracts.

**ANTHONY COURY** has focused his 9 years of practice primarily on personal injury and wrongful death lawsuits in which he has served as plaintiffs’ counsel. He has experience in cases dealing with dram shop liability, negligence, governmental claims and products liability including service as counsel on the litigation team for Phoenix Police Officer Jason Schechterle.

**JANET FELTZ** was admitted to practice in Arizona in 1985. Prior to joining the firm in 2005, she served as an administrative hearing officer for twenty years in disciplinary and other employment matters on behalf of merit boards and commissions throughout the State. She also served as an administrative law judge for the Arizona Department of Economic Security from 2001 – 2005.

**MICHAEL NAPIER** has been representing Phoenix officers for over 32 years. Mr. Napier is one of the most experienced labor and personal injury attorneys in Arizona. Mr. Napier has represented hundred of officers before administrative bodies throughout Arizona, and has assisted critically injured officers and the survivors of the officers in obtaining compensation for their injuries and losses.

**KATHRYN BAILLIE** was born and reared in Phoenix, Arizona, completing her undergraduate degree at Arizona State University. She served as a J.A. for the Third Circuit Court and then worked as a Public Defender in the Commonwealth of Kentucky before joining the Law Office of Michael Napier, P.C. She has worked with Michael Napier on personal injury and wrongful death cases, dram shop liability, negligence, administrative, disciplinary, and other employment matters.

**PLEA Meets With Senator John McCain**

By Mark Spencer
PLEA President

Membership meetings are the last Tuesday of each month at 7:30, 12:30, and 5:30. Board meeting is held the 3rd Tuesday each month and members can attend at 8:30 am.

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It is no secret that we are in the middle of a budget crunch and everyone has been asked to do their best to curtail unnecessary expenses to the Department. One area that has been more closely scrutinized than ever before is overtime. PLEA Secretary Ken Crane authored an article last month noting that one of the current trends seen in several work units within the Department is supervisors requiring, “suggesting”, or asking employees to flex out their overtime hours in lieu of pay. This practice is prohibited and the City is required to pay you for any overtime worked.

I am all for saving the City and Department money whenever possible. However, there are certain instances where overtime is simply a cost of doing business and there is no way of getting around it. One is court appearances outside of an officer’s normal work hours. Here’s a situation which recently occurred that tends to make one wonder how much money the Department really saved by not allowing one officer to hold over to take care of a detail.

Officers arrest a subject for DUI, however a DUI van is not available at the time so they request assistance from a phlebotomist. An officer within the precinct answers up and agrees to meet the arresting officer at the station. As Murphy would have it, the suspect refuses to consent to a blood draw, so the phlebotomist has to author a search warrant. As the clock ticks away, the arresting officer is told they will have to find another phlebotomist to do the blood draw since the first one secures soon and can’t hold over because we have to keep overtime down. Eventually a second phlebotomist is located, but only gets a partial vial of blood before the suspect’s vein collapses. As it turned out, this suspect is a former heroin addict whose veins were prone to collapse. A third phlebotomist was summoned and was unsuccessful in obtaining any blood. Eventually, a fourth phlebotomist, who was tied up on another investigation when the first call for a phlebotomist went out, responded. The last phlebotomist obtained two vials of blood without incident and submitted them to the crime lab for analysis.

The blood alcohol concentration from the final blood draw returned at a 0.20. Most cases like this usually result in the defendant taking a guilty plea, however this suspect requested a trial. On the first morning of court, there were a total of nine officers present in the courtroom waiting to see if the defendant would proceed with the trial. Three were involved in the initial traffic stop and DUI investigation, four were phlebotomists, and one was a witness officer, the partner of one of the phlebotomists.

As it turned out, this one did go to trial and extended over three days with the original investigating officer, case agent, and three of the four phlebotomists being called to the stand. The nine original officers received their three hour minimum. Of the remaining eight, the case agent attended trial for all three days on overtime, while the original investigating officer and phlebotomists were on standby until called in to testify. For the sake of saving what would have probably amounted to one hour of overtime on behalf of the original phlebotomist, how much did this case really cost the Department? To quote an old cliché “You do the math!” or, “How much did we end up paying on the back end trying to save money on the front end?”

Submissions can cover most any topic that is relevant or of interest to law enforcement personnel. Any submissions must be in Microsoft word and submitted via e-mail no later than the 15th of each month to the Recap editor via e-mail at kcrane@azplea.com. Although we will always strive to print articles in their entirety, PLEA reserves the right to refuse publication and edit articles for content and length.
SATURDAY – SEPTEMBER 18th, 2010

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RECAP Page 5
In the August edition of The Monthly Recap we reprinted an article from the Force Science Research Institute: The Factors Behind the Force, that gave an analysis of the controversial shooting that occurred on January 1, 2009 when San Francisco Bay Area Rapid Transit officers accidentally shot a suspect when one of the officers mistakenly pulled his duty gun instead of his Taser in an attempt to control an unruly suspect.

Incidents such as this, while tragic and unfortunate, can unfold and occur in the blink of an eye when we least expect it. Most of us are aware of the dangers that go with the job, some more than others and most cops do a pretty good job of not dwelling on the danger in order to get the job done. Most officers don’t leave the station looking for trouble and those of us that have been around awhile know that trouble will often find you.

The majority of use of force incidents unfold and conclude rapidly. While most of us do a great job of handling the situation as it occurs, many are unprepared to deal with the aftermath that can go on for months or years. It is not uncommon for cases involving an aggravated assault on a police officer to take over a year to wind their way through the judicial system.

If a use of force incident is “dicey” or has grey areas, it can result in an officer being criminally prosecuted, civilly sued, or both. This is when the long journey begins. This often raises the question: What can I do to prepare for a situation like this?

As the saying goes, knowledge is power. One of the best ways to prepare for use of force incidents aside from physical and mental conditioning is to know policy and the relevant state law as it relates to use of force. Phoenix Police Department Operations order 1.5 covers use of force. We need to be familiar with how various types of force are defined in policy. How is reasonable belief defined? How is serious physical injury defined? How is excessive force defined? What are the various types of resistance and response options outlined in policy? What are the restrictions if any on the use of force?

The Department adheres to the “objective reasonableness” standard that was laid out in the landmark Supreme Court case of Graham v. Connor. The Graham standard is often referred to as the three prong test in determining the reasonableness of using a particular force option. They are:

1. The severity of the crime at issue.
2. Whether the suspect poses an immediate threat to the safety of officers or others.
3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Officers are judged by the courts under the “reasonable officer” standard. In other words, what a reasonable officer on the scene would have done or have been expected to do given the same set of circumstances.

PPD policy says that “Officers involved in the use of force have the responsibility of providing the facts and circumstances they believe justified the use of force by completing the necessary reports, memos, etc.”

For many, especially new officers, this is the part where things can go sideways. Use of force situations that don’t seem like a big deal when they happen often turn into a big deal later when criminal charges are brought or civil lawsuits are filed. One thing that all use of force experts will agree on is that the facts surrounding an incident must be conveyed in a clear concise manner. Sometimes we fall short in this area and it is often due to a lack of training or experience.

There are times when a suspect might receive, to coin a phrase, “a righteous well deserved biblical ass kicking.” No matter how well deserved, the documentation has to be there to back it up. In short, if a suspect is beaten soft, booked into the jail ward at County hospital, followed by a DR that says “suspect X was taken into custody ‘after a brief struggle’ and booked into jail”, there will probably be problems later down the road in court.

When writing reports or memos we need to write it for the person who wasn’t there i.e. reviewing supervisors, prosecutors, judges, Grand Jury panel members, Use of Force Board members etc. It is imperative to cover factors such as weather, lighting, distances, things that may have hindered reaction times, traffic density, pedestrians or bystanders present; facts and information that were known to you at the time of contact with the suspect and most importantly, in some way shape or form, the reader needs to be able to understand your level of training and experience. In addition, get in the habit of using the same terminology that the Department uses in their policy as it relates to use of force and as taught in defensive tactics.

Most vehicle pursuits, foot pursuits, and dicey arrest situations will provoke discussion in the days that follow between squad mates. We often poke fun at the actions of our fellow officers and suspects that we arrest as we relive the harrowing as well as comedic points of the event. While comedic relief may be OK in the briefing room or when talking among fellow officers, attempting to inject humor or jokes into the text of a DR will do nothing but cause problems later down the road. The following are some excerpts from actual police reports:

- An officer took an armed robbery report. The victim was from the country of India. In the additional info block the officer wrote “Indian with a dot, not a feather”.
- On a prostitution sting where “Johns” were being arrested, an
On May 6, 2010, between 11:40 a.m. and noon Phoenix time, the New York Stock Exchange went into a sharp free fall, the Dow Jones Industrial Average losing a thousand points in a matter of minutes. Fortunately, “the boat” righted itself, market values rebounded, and things returned to a state of relative calm.

But questions linger. What happened? Did someone confuse billion for million in a trade order? Was some other human error to blame? Was it a computer glitch using pre-programmed mathematical models? Were there sudden mass fears about the Greek debt crisis?

So far, no one theory has been proven. Nationwide Retirement Solutions, the administrator for the city’s 457 and 401(a) Plans, feels that from the perspective of a city of Phoenix Plans participant, what caused the “flash crash” probably doesn’t matter. Nationwide notes that what happened that day was a market volatility lesson in quick time – sudden proof of the statement: “Investing involves market risk, including possible loss of principal.”

As a retirement investor, you’re likely to be in the city of Phoenix Plans for the long term so short-term market volatility should be less of a concern than a long-term trend of asset growth for your retirement savings. Nationwide cannot guarantee that, even over the long term, participants will not lose money. However, they point out that since the days of the Great Depression, every market downturn has been followed by an upturn. When that happens, – thanks to the concept of dollar cost averaging – those who continued regular contributions often see their portfolios strengthened.

When market conditions “rock your boat,” let Nationwide provide education to help you find your own “calm waters.” Call and speak with a Plan Representative for the city’s Plans at 602-266-2733.

Information from plan representatives is for educational purposes only, and not intended as investment advice.

Who rocked the boat?
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If You Have A Grievance

FIRST: Attempt to resolve the matter informally with your supervisor.
SECOND: If you cannot resolve this with your supervisor, contact one of the representatives above.
REMEMBER: There are time limits to initiate a written grievance.

If You Are Being Investigated

RECORD: All interviews once you have been given an NOI.
COPY: All memos or paperwork related to the investigation.
TRUTHFULLY: Answer all questions related to the investigation.

If you are called by Professional Standards Bureau or any police supervisor regarding an investigatory interview or interrogation, you may have PLEA representation during that interview. Call for representation as soon as possible. For your convenience, a PLEA board member and representative are available 24/7.