



officer with gun in hand can fire and turn 360 degrees to flee in .98 seconds while it takes an officer with his firearm holstered 1.70 seconds to recognize the threat, draw his firearm, acquire his target and shoot. The expert now has a scientific way to explain how an officer, being threatened with deadly force, reacted properly, but shot the suspect in the back.<sup>5</sup>

All law enforcement officers know that the concept of taking action once a threat has been recognized, but before the threat has been carried out, is known as “pre-emptive” action. Officers also know that pre-emptive action is only authorized under the law if their threat assessment is reasonably made.

Assume that an expert has the following set of facts to explain to a jury: (1) an officer stops a suspect in a car that had been reported to have been used in a bank robbery two hours earlier; (2) bank employees reported that they noticed during the robbery the suspect was armed with a .45 caliber semi-automatic handgun; (3) the suspect, after being stopped, refused to follow the officers commands to show his hands; (4) the suspect made a movement which caused the officer to believe that he was going to draw a gun (furtive movement) and the officer shot and killed the suspect before he could draw his weapon.

Under this set of facts, the expert would testify that officers are told in training programs that it is reasonable for an officer to interpret the failure of the driver to follow his commands as threatening behavior and, coupled with any furtive movements by the suspect, would justify pre-emptive action. Officers are also told in training programs that they would be

authorized, under the above fact scenario, to use deadly force because the perception of a danger of serious bodily harm or death was reasonable under the set of facts and circumstances presented. Again, this is another example where it is likely that the court would allow the testimony as to the justification for the shooting based upon the expert’s qualifications to testify on what officers are told in training programs about taking pre-emptive action.<sup>6</sup>

Utilized properly, the expert can be of tremendous value to a police officer’s effort to defend himself in a civil suit.

The expert can integrate science, law and law enforcement protocol in his testimony to explain to a jury why an officer’s actions were justified and reasonable.

The expert can help the jury in understanding why an officer acted the way he did and the possible consequences to the officer had he not responded the way he did.

1 *The Civil Rights Attorney’s Fees Awards Act, 42 U.S.C.A. § 1988(b)*

2 *The Economist Magazine, 2006*

3 *Darrell Ross, Research, East Carolina University*

4 *Eric A. Vos, The Champion Magazine, June 2007*

5 *Bill Lewinski, Force Science Center, Minnesota State University, WWW.ForceScience.Org*

6 *Melvin L. Tucker and Chris Wisecarver, Legal Authority for Pre-Emptive Action, National Tactical Officer’s Association Magazine, Spring 2008*

## An Expert’s Take on the Importance of the PBA

By Mel Tucker

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**W**hen I was asked to write an article for the *Blue Review* about expert witness testimony and what the law enforcement officer gets for his/her money when employing an expert, it was easy. All I had to do was describe what I do, since I am an “expert witness.” But, as I sat down to write the article titled *The Value of an “Expert Witness” in Police Litigation* I felt it was also important to express my feelings about the benefits provided by

the Southern States PBA and how being a member of this great organization not only provides you the services that I offer as an expert witness when needed, but also provides its members with peace of mind that no other organization can offer.

In today’s tough economic times, we should all ask what we are getting for our money.

Are you getting real value for your money with your SSPBA membership? The answer to the question is simply.... **Yes, you are!**

With more than 30,000 lawsuits being filed each year against law enforcement officers, your chances of being sued are now 1 in 20. Most officers, when sued, want a lawyer that is representing *their* interest and not the interest of their employer. The cost to retain an experienced attorney and to hire an expert witness to defend a case can easily exceed \$50,000. The SSPBA will provide an attorney for you and, if needed, an expert witness like me to protect your interest if a criminal or civil action is brought against you arising out of your duties as a law enforcement officer. In many cases, expert witness testimony is necessary to present the most effective defense. PBA legal benefits include the cost of expert testimony when your attorney and the PBA legal team decide that an expert is necessary. Having served successfully as an expert witness in numerous PBA cases, I think your \$23.50 a month membership fee in the SSPBA is money well spent and a drop in the bucket when you need that lawyer and expert to defend you!

Do not overlook the other benefits that you also receive as a member of the SSPBA. Membership brings with it attorney representation when you are being subjected to unfair discipline, assistance from professional pension consultants as you try to improve your benefits, professional lobbyists to help get legislation favorable to law enforcement officers enacted, a salary replacement benefit for your family if you are killed in the line of duty and an attorney if you are forced to shoot someone. You can count on that by being a member of the SSPBA. If you are not a member already, you should be!