



Who You Gonna Call? - When A Normal Day Goes Bad

By Elizabeth Marum
SSPBA Staff Attorney

When Officer Jamie Oxendine of the Maxton (NC) Police Department started work September 18, 2008, he did not expect he would end the day shooting a 15-year old. But when he responded to a call reporting that a weapon had been drawn at an apartment complex--and when that weapon was pointed directly at him--he had no option but to shoot. Officer Oxendine knew this was the time to call PBA.

Within minutes, PBA attorney John Roebuck was headed to the aid of the officer, arriving before the North Carolina SBI arrived. The PBA referral attorney was able to immediately advise the member and was present for the SBI interview. Despite the fact the investigation is on-going, the member is back to full-time duty and will continue to be in regular contact with the attorney until the matter is resolved.

"It made me very comfortable to know that I had an attorney that would be responding with me," said Officer Maxton. "It was a very short time between me calling PBA and the attorney arriving. It was good knowing that the service was available."

According to Mr. Roebuck, "The main thing is that there is someone on scene that the officer can talk with who is clearly on their side. If an attorney gets there before SBI they can inform the officer of what to expect. The officer will know to expect a lot of questions that don't deal with what happened that day. The sooner they know that the better they can prepare to remember what happened 48 hours before."

92,685

92,685 people filed a complaint against police officers in the US for excessive use of force between the years of 2003 and 2005



The Importance of having an attorney from the start

"Almost without exception, police officers involved in a shooting [or other duty-related fatality] cannot give factual, accurate details about what really happened within hours after the incident."

--Attorney Russell Wood, AR

PBA attorney Russell Wood has responded to the scene of officer shootings. He says it is important for officers to have an attorney available to assist them with every event from the start of the incident. Wood asserts that it is important to have an attorney representative available to review and analyze the legal repercussions of any statements made after a shooting to avoid any potential adverse consequences. In one situation, Mr. Wood was able to successfully object to state investigators' requests for a recorded interview just hours after a fatal shooting involving two officers. He insists that it is important to "give police officers an opportunity to decompress after the stressful event." In his years of responding to similar calls, Wood has found that these kinds of events happen so quickly

that it is necessary for the officers to take a day or two to calm down, so they can accurately remember the facts.

He adds that statements made directly after a shooting, or other extremely stressful event, often are not an accurate, factual representation of the incident. "Officers need an attorney on the scene to prevent them from making factually erroneous or legally erroneous statements to departments or state investigators," Woods said. He added that erroneous statements or reports made by officers immediately after the event can come back years later in a civil suit and "completely destroy their credibility in front of a jury."

PBA Attorney Jason Metz in Mississippi agrees. "They should be advised that even if their actions were proper, they must keep their comments to themselves," Metz said. "There is a likelihood that a civil suit based on excessive force may be lodged against them. Their comments may be brought into the civil suit." Among other things, Metz's opinion is that, on responding to a shooting scene, an attorney should advise officers as though they were being accused of committing a crime until the attorney is convinced otherwise and should advise officers of the "qualified immunity" defense, therefore protecting officers from potentially damaging actions.

"They gave us advice on not only the criminal matter but also the possibility of civil litigation in the future and how to handle that," said Michael Ivy of Mississippi. "That prepared us for it from the perspective of the worst case scenario."

Officer Ivy was involved in a shooting with several other PBA members in January 2008. He was shocked by the "tremendous trauma" he experienced in having been involved in a shooting. Jason Metz and his partner responded to the scene, arriving just 20 minutes after Officer Ivy's call to PBA and before SBI arrived to question the officers.

"They represented us individually in questioning, prepared written statements with us, read and reviewed our statements and then were present and