

The Phenomenological Role of Incident Reports

By: John G. Peters, Jr., Ph.D., CLS

Science is often used at trial when governmental entities and/or officers are sued in an arrest-related death, or are involved in a criminal prosecution. The United States Supreme Court held in Daubert v. Merrill Dow Pharmaceuticals, Inc. that to determine scientific reliability of research studies and/or data that are introduced at trial, the following five factors need to be considered by the Trier of Fact:

- Empirical testing;
- Subjected to peer review and publication;
- Known or potential error rate;
- Whether there are standards controlling the technique's operations; and,
- Whether the theory and technique is generally accepted by a relevant scientific community (Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)).

When thinking about laying a scientific foundation at trial, the officer's incident report is often not considered to be scientific. This is incorrect because an officer's incident report is a qualitative, phenomenological report. Leedy and Ormrod (2001) noted that "in its broadest sense, the term *phenomenology* refers to a person's perception of the meaning of an event, as opposed to the event as it exists external to the person" (p. 153). Cresswell (1994) wrote that phenomenology is "understanding the 'lived experiences'" (p. 12).

Fighting with a suspect or suspects is a "lived experience" and therefore, the officer's incident report qualifies as a phenomenological report, which can be used at trial to lay a scientific foundation. Reynard (1998) suggests the following questions be asked to determine if the reports are sound:

- Is the report firsthand?
- Where was the observer?
- Did the participant have a reason to give false or biased information?
- Is the report internally consistent?
- Can the report be validated by other independent reports? (p. 202).

Providing answers to these questions is straightforward, as the officer who was involved in the arrest-related death confrontation is reporting firsthand, and was the observer. (S)He was involved in the altercation, so it is a "lived experience." The officer has no reason to provide false or biased information, because the arrest-related death incident will be investigated by others within or outside his or her agency. The investigative reports will help to provide internal consistency about the officer's report, and will also help to validate the officer's incident report.

The importance of accuracy and thoroughness cannot be overstated. First line supervisors must be diligent and reject those incident reports that are vague and poorly written. As highlighted by Wallace

and Roberson (2009) written communication is critical in law enforcement and is often taken for granted. Officers need to revise their incident reports until they contain sufficient and necessary information to inform others accurately and honestly about an event in which they were involved. Understanding the additional role of incident reports as phenomenological reports should make first line supervisors and officers motivated to write better, more complete and more accurate descriptions about the event and their observations.

When an arrest-related death occurs, the Medical Examiner, Judge, and/or jury were not present so they must rely upon incident reports written by those who "lived or observed the experience." Therefore, incident reports become classified as phenomenological reports, because they give first-hand observation about what took place before, during, and after the struggle. In some cases, incident reports also provide analysis and interpretation of what had occurred between the suspect and the officer, or among the suspect and the officers. Incident reports help others, such as a Medical Examiner and/or a Judge and jury "[attempt] to understand people's perceptions, perspectives, and understandings of a particular situation" (Leedy & Ormrod, 2001, p. 153).

In summary, law enforcement officers' incident reports are often foundational documents attorneys can use to begin laying a scientific foundation at trial, and need to be thought of as a phenomenological document. These "lived and/or observed experience" reports are qualitative in nature, and are also often used by scholars performing qualitative research. Incident reports contain descriptions and data about the "lived experience" that involved the officer and the suspect. Phenomenology is one qualitative research methodology that is often used by expert witnesses and others, such as Medical Examiners, at trial. Too often officers' incident reports are *only* considered documents used to help educate medical examiners and others about events. However, when it is rightly classified a product of qualitative research that can be used to help lay a scientific foundation at trial, suddenly the incident report gets the significance that it deserves.

References

- Cresswell, J.W. (1994). *Research design: Qualitative & Quantitative Approaches*. Thousand Oaks, CA: Sage Publications.
- Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).
- Leedy, P.D., & Ormrod, J. E. (2001). *Practical Research: Planning and design* (7th ed.). Upper Saddle River, NJ: Merrill Prentice Hall.
- Reinard, J. (1998). *Introduction to communication research* (2nd ed.). Boston: McGraw Hill.
- Wallace, H., & Roberson, C. (2009). *Written and interpersonal communication: Methods for law enforcement* (4th ed.). Upper Saddle River, NJ: Pearson Prentice Hall.