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Representing Las Vegas Metro Police Department Officers and Deputy City and Municipal Court Marshals

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May/June 2016



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The Las Vegas Police Protective Association is affiliated with the following organizations at the state and national level:

NAPO – National Association of Police Organizations, representing over 241,000 law enforcement officer members in more than 1,000 police associations nationwide.

"BIG 50" – An informal association of the 50 largest law enforcement associations in the United States.

SNCOPS – Southern Nevada Conference of Police and Sheriffs





Executive Director's Message

POLICE OFFICER MARK CHAPARIAN, EXECUTIVE DIRECTOR

May They Live Within You

Memorial Day has a long and rich history dating back to the mid-1800s. The United States government sanctioned Memorial Day as an official holiday in 1971, to be recognized on the last Monday of every May. Traditionally, this holiday was created to honor those who were serving in the military and died during wars and armed conflicts. More recently, that tradition has evolved into remembering all those who have left us behind and have moved on toward the greater spaces of Heaven.

In 1962, President John F. Kennedy signed a proclamation that designated May 15 as Peace Officers Memorial Day and the week in which that date falls as Police Week. National Police Week has grown into a large event where thousands upon thousands of people make their way to Washington, D.C., to pay homage to all law enforcement professionals who have lost their lives in the line of duty. I have made that trip several times, and every police officer should do it at least once in their career to have a full understanding of the respect, love, compassion and caring offered by not only your brothers and sisters in uniform, but also the public in general.

We, as law enforcement professionals, know all too well that the profession we have chosen is a dangerous and grueling one. Each year we lose so many of our colleagues to murder, accidents and suicides. The numbers are staggering.

We grieve our losses, we get counseling, we seek refuge within our religion and we close ranks, holding our family closer than ever before. It's what we do and it's how we cope. Life must go on.

Each of us has likely already lost a family member, a partner, a friend or another significant person sometime in our life. Sadly, I'm finding that the older I get, the more likely that seems to occur.

So why do we have Memorial Day and Police Week? We are the living, and those who have passed before us would want us to celebrate their lives. Yes, it's important to remember and honor them, but it's just as important to live life to the fullest, just as those before us would have wanted us to do.

I choose to allow all the people I knew who have passed and who I've loved, befriended or admired in my lifetime to live forever within me. From time to time, my mind will wander and I will remember a particularly funny event we shared or a moment of wisdom that person bestowed upon me. I choose to honor the living moments I had with each of these people and keep their spirit alive and well, therefore ensuring that their life and ultimate death was not in vain.

My own father passed away before my children were able to know him, experience him and create memories with him. I took all those great memories, idiosyncrasies and values I was able to experience with my dad and made them come alive so my children could benefit from who my father was and all he had to offer me, my family and everyone he was able to touch. My father doesn't have to be with us here on earth for my children to understand what kind of man he was and what he stood for. Since he is no longer alive, it's my responsibility to ensure that they know as much about him as I can teach them.

This May, I ask all of you to take some time to remember those people special to you who have passed, and honor them as they deserve. Even more importantly, I ask you to ensure that whatever it was about them that you cherished, loved, honored and appreciated is passed on to others. Allow others to know what you know about that person, share funny stories and pass on the wonderful ideas your loved one expressed to you. We can learn a lot from those who came before us and are no longer with us. The learning process begins with you.

I, like so many I know, have lost too many friends and colleagues serving our communities for the greater good. They are remembered for the honorable lives they led and for the goodness in their hearts and minds. May the spirit of each of them touch your soul, so that you are a better person because of the lives they led and the good deeds they did.

As always, be safe! **VB**

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Candidate Endorsements

POLICE OFFICER MIKE RAMIREZ

Assistant Executive Director/Director of Governmental Affairs

If you are not concerned with your retirement (PERS), your rights as police officers or your ability to collectively bargain, *stop reading*, because none of this will matter to you. If you do care about these important issues for police officers, by all means, continue reading. The Coalition of Law Enforcement just spent the last several weeks interviewing political candidates for the state Assembly and Senate to determine which are the best selections for our organization to endorse. This coalition is made up of representatives from the Fraternal Order of Police (FOP), Nevada Association of Public Safety Officers (NAPSO), Peace Officers Research Association of Nevada (PORAN), and Southern Nevada Conference of Police and Sheriffs (SNCOPS), representing nearly 100 law enforcement organizations and more than 10,000 officers throughout Nevada. In the interview process, each candidate was asked a series of questions pertaining to the issues that are important to our officers. As suspected, there were some candidates who were more qualified than others and some we felt would have our best interests in mind. After the interviews were completed, our coalition voted to determine which candidates would receive our official endorsement, and the selections are as follows:

Assembly District 1: Endorsement to come after primary
 Assembly District 2: After primary
 Assembly District 3: Nelson Araujo Jr.
 Assembly District 4: After primary
 Assembly District 5: After primary
 Assembly District 6: After primary
 Assembly District 7: Dina Neal
 Assembly District 8: Jason Frierson
 Assembly District 9: After primary
 Assembly District 10: After primary
 Assembly District 11: Olivia Diaz
 Assembly District 12: After primary
 Assembly District 13: Paul Anderson
 Assembly District 14: Maggie Carlton
 Assembly District 15: Elliot Anderson
 Assembly District 16: Heidi Swank
 Assembly District 17: Tyrone Thompson
 Assembly District 18: Richard Carillo
 Assembly District 19: No endorsement
 Assembly District 20: Ellen Spiegel
 Assembly District 21: After primary
 Assembly District 22: No endorsement
 Assembly District 23: After primary
 Assembly District 24: Amber Joiner
 Assembly District 25: After primary
 Assembly District 26: After primary
 Assembly District 27: Teresa Benitez-Thompson
 Assembly District 28: Edgar Flores
 Assembly District 29: Stephen Silberkraus
 Assembly District 30: Michael Sprinkle
 Assembly District 31: Richard Daly
 Assembly District 32: No endorsement
 Assembly District 33: No endorsement
 Assembly District 34: After primary

Assembly District 35: After primary
 Assembly District 36: James Oscarson
 Assembly District 37: Glenn Trowbridge
 Assembly District 38: No endorsement
 Assembly District 39: No endorsement
 Assembly District 40: After primary
 Assembly District 41: After primary
 Assembly District 42: Irene Bustamante
 Senate District 1: Pat Spearman
 Senate District 3: After primary
 Senate District 4: Kelvin Atkinson
 Senate District 5: Joyce Woodhouse
 Senate District 7: David Parks
 Senate District 11: Aaron Ford
 Senate District 13: Julia Ratti
 Senate District 15: After primary
 Senate District 18: Alexander Marks
 Senate District 19: No endorsement

2017 will be an important year for our organization, and the candidates listed above are the ones we collectively feel can help us achieve our goals during the P# 10145 next legislative session. When voting this year, please consider those we selected to endorse. Let's make the 2017 legislative session one to remember in a positive way.

As always, be safe out there, and please know we are here for you 24/7. If you have any questions, don't hesitate to call me or email mramirez@lvppa.com. **VB**



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Updating Your Beneficiary Information

CORRECTIONS OFFICER THOMAS REID

Director of Operations

The other day I got a call from an LVMPD retiree informing me that another retiree was not doing well, healthwise, and had some questions about benefits he might be able to pass on to family members. Death and dying are not great subjects to write about, and these calls are never easy to have, but it's a part of life. Your wishes as to who gets your benefits, retirement PERS checks and life insurance proceeds are important. The fact is that when a loved one passes away, the paperwork involved is immense, and the time you spend on the phone or in person getting information about what the deceased person had in the way of insurance benefits can drive you crazy. Preparing and keeping updated information detailing who you want to receive these benefits is vital to you and your loved ones.

Family situations change, especially in this profession, with events such as marriage, divorce, births, being a caregiver to parents or another relative, and retirements all playing a role in your beneficiary designations. It is highly recommended that at least once a year, or anytime you have a change in your family status, you verify and update information with each of the agencies and companies listed here. This list is only a baseline to get you started on updating your beneficiary information. Your own private insurance, trusts and wills need to be considered as well. **VB**

Agency	Phone number	Email or Web address	What you need
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NV PERS	(866) 473-7768	www.nvpers.org	Forms available online
LVMPD EH&WT	(702) 413-1701	www.umar.com/tpa-ap-web	Beneficiary forms
LVPPA	(702) 384-8692	office@lvppa.com	Beneficiary designation form
LVMPD SPA	(702) 452-5765	www.lvmpdspa.com	Beneficiary designation form
Mass Mutual	(855) 553-2713	jcorral@massmutual.com	Beneficiary form



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Nevada PERS Q&A

CORRECTIONS OFFICER SCOTT NICHOLAS

Treasurer

Recently, many questions have been asked regarding your PERS benefits and if changes came from the 2015 legislative session. Here are some of the most commonly asked questions.

What does it mean to be vested?

Vesting refers to the time period necessary for you to work in order to earn the right to receive a retirement benefit. For example, once you have attained five years of service, we consider you vested in the system and eligible to receive retirement benefits at age 65. Vesting also occurs at other time periods, such as 10, 20, 25 and 30 years, which makes you eligible to receive benefits earlier than age 65.

How does the 75% at 30 years of service compute with the new rate of 2.67%?

Service credit earned before July 1, 2001, will be calculated using the 2.5% multiplier. Service credit earned on or after July 1, 2001, will be calculated using the 2.67% multiplier. Members may reach the 75% Service Time Factor before completing 30 years of service. Members newly enrolled in PERS on or after January 1, 2010, receive 2.5% for all service earned and are not entitled to the 2.67% multiplier.



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How is my benefit calculated when I retire?

Your service credit is multiplied by the service time multiplier (2.5% for each year completed prior to July 1, 2001, and 2.67% for each year completed on or after July 1, 2001). The total percentage earned is then multiplied by your average compensation.

Members newly enrolled in PERS on or after January 1, 2010, receive 2.5% for all service earned in the system.

What is average compensation?

The average of a member's 36 highest consecutive months of compensation as certified by the public employer. For members newly enrolled in PERS on or after January 1, 2010, the average compensation shall be based on the average of the 36 highest consecutive months of compensation subject to a 10% salary cap.

When can I retire?

Here are the eligibility requirements for retirement based on when you were first enrolled in PERS:

Members enrolled in PERS <i>before</i> January 1, 2010	
Regular members	Police/fire members
5 years, age 65	5 years, age 65
10 years, age 60	10 years P/F, age 55
30 years, any age	20 years P/F, age 50
	25 years P/F, any age

Members enrolled in PERS <i>on or after</i> January 1, 2010	
Regular members	Police/fire members
5 years, age 65	5 years, age 65
10 years, age 62	10 years P/F, age 60
30 years, any age	20 years P/F, age 50
	30 years, any age

Note that there were *no* changes to PERS in 2015 for police and fire. I hope this helps. **VB**

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Giving Back and Giving Thanks

POLICE OFFICER BRYAN YANT

Director of Technology

Our profession is often thought of as a family. The men and women of law enforcement are our brothers and sisters. Even though we have different agencies across the country, from big-city policing to small-town policing, we all share the duty of service. We watch over our partners and help them in their time of need. So I would like to tell you how I was able to give back to an officer I did not know from the New York City Police Department and his family in their time of need, and say thank you to those who helped.

As my ex-wife came to my house to pick up our kids for her days, she told me about a patient who came into the emergency room at Valley Hospital, where she is an emergency room nurse. She said there were several NYPD K-9 officers there with one of their partners, who had a serious medical condition and was being admitted to the hospital. She didn't get into specifics, but she said he may be here for a while and his family was back in New York City. While I loaded the kiddos into her car, I asked her for the contact info for the other officers at the hospital.

After they left, I called the NYPD K-9 officer. He began to give me a rundown of their partner and his condition. They were all out here for a K-9 conference at the Tuscany. Several of our own K-9 officers were in P# 15047 attendance as well. They had been in town for three days and were scheduled to stay one

more day, then return to NYC. I asked if there was anything they needed that night because it was late, and told him I would run down to the hospital in the morning and check on them. He said that their union, the NYPD Police Benevolent Association, was working on getting the officer's family flown out so they could be with him. I told him that I'd make arrangements to get the family from the airport to the hospital once I had the flight info. I reached out to Captain Plummer from BAC and asked if he could have a car respond to the hospital to check on the officers and be a point of contact during the graveyard shift that night. He immediately had Sergeant Price contact me, and Sergeant Price went out of his way to offer his assistance to the NYPD officers.

The next morning, once I had flight information and knew who was coming, I called Detective Goltart, Lieutenant Lloyd and Minddie Lloyd of the IPOF.



On behalf of the LVPPA, Mark Chaparian recognized Cory Hammerbeck and Minddie Lloyd for their efforts.

Through the IPOF and Phil Ruffin of the Treasure Island, they were able to secure hotel rooms for the family of the officer and his partner for the length of his stay in the hospital. Officer Sibelrud from the airport helped me get the family from the plane through the airport quickly and off to the hospital. For the next two days, I spent my time before and after work taking the family and other officers back and forth from the hospital to their hotel, and trying to make a stressful situation far away from home less chaotic.

Thankfully, the staff of nurses and doctors at Valley Hospital were excellent and were in constant communication with the officer's doctors in NYC. After several days, once he was stable, he was able to fly back home and was taken to a local hospital in NYC. JetBlue was amazing, booking their return flights and making flight changes. JetBlue has always comped flights for officers attending funerals for those killed in the line of duty, and in this instance it was extremely generous to the family and the officers.

All in all, I'm very grateful to have been able to help and give back to one of our own in our profession. I want to thank everyone who had a hand in making all this possible.

At the PPA, we have the honor of protecting your rights and providing you with assistance and guidance. To help a fellow officer and his family from another jurisdiction was an honor and a privilege. **VB**



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Top Cops Nomination for 2015

DETECTIVE STEVE GRAMMAS

Secretary

On Friday, September 4, 2015, at 0352 hours, Officer Malik Grego-Smith and Officer Jeremy Robertson, while operating as a marked LVMPD Patrol Unit, arrived at a residence in response to a prowler call. The homeowner stated several times to LVMPD call takers that he heard subjects in the rear yard trying to gain entry to the house. At one point, an unknown subject was ringing the homeowner's doorbell, while another subject was in the rear yard. The homeowner told the LVMPD call taker that he believed the subjects were armed.

As Officers Grego-Smith and Robertson arrived and parked in the middle of the cul-de-sac, they began to search the road ahead of them, looking for potential subjects. As Grego-Smith and Robertson approached the front of the residence, they noticed a high block wall with spikes affixed to the top to keep intruders out. The only entrance to the yard was a six-foot-tall iron gate with spikes affixed as well. Grego-Smith and Robertson could not hear anything in the yard, and they began to approach the front porch area. When they were near the front door, they heard a sound toward the rear yard. Grego-Smith and Robertson made contact with the homeowner and entered the residence. Once inside, they went to the kitchen to look out the windows to try and locate any subjects in the rear yard. There were no lights on in the rear yard or porch area, and no subjects could be seen.

When the door opened, both officers were fired upon by the suspects, one of whom was armed with an AK-47 and the other with a shotgun. Robertson was hit in the right hip area by a round that was fired from the AK-47, immediately rendering his leg unusable. Grego-Smith immediately returned fire, hitting the AK-47-wielding suspect in the calf and also hitting the shotgun fired by the other suspect. The suspect hit by Grego-Smith fled the area, while the other took cover behind a pony wall P# 15077 that separated the patio and the grass area in the backyard. Due to all of the items in the backyard and the darkness of it, even with a flashlight Grego-Smith was unable to see the suspects.

Grego-Smith knew that at least one suspect remained in the backyard, whom he was giving verbal commands to and getting replies from. Robertson was unable to move due to the injury. With no regard for his own safety and not knowing if the shooting was over, Grego-Smith stepped into the doorway, away from cover, and stood in front of Robertson, who was lying on the floor. Grego-Smith provided cover for his downed partner, and requested medical and a downed officer rescue as well as an arrest team.

K-9 Sergeant Bitsko, along with K-9 Officers Overson and Hemsey, took one suspect into custody after he refused to comply with their orders. Knowing the suspects were armed, the decision was made for Bitsko to deploy his K-9, which was effective and allowed officers to take the remaining suspect into custody. When he was taken into custody, he was still in possession of the shotgun. The suspect suffered several bites to his hands and head.

Robertson was taken to UMC Trauma by Las Vegas City Fire Department. He never lost consciousness during the event. He was able to assess his injuries and provide vital information to Grego-Smith and Dispatch.

A large perimeter was set up with officers from numerous commands. A massive manhunt utilizing SWAT, K-9, Patrol and Detectives was conducted for the escaped suspect. The outstanding suspect was apprehended climbing over walls west of the shooting, near Westcliff and Antelope inside of the perimeter. The following officers were the first responders who established the ar-

rest team and performed the downed officer rescue: Officers Russo, Adkisson, Vaughn, O'Neil, Keller, Fields, Truax, Vance, Henry, Rowberry, Villagrana, Velicescu and Kyger, along with Sergeant Hansen.

During subsequent interviews with the subjects, it was determined that this was going to be a home invasion for narcotics. One of the suspects had been in a dating relationship with the homeowner. The dating relationship had just ended and the suspect wanted to get revenge on his former lover by committing the home invasion.

The Las Vegas Police Protective Association was proud to nominate Officers Malik Grego-Smith and Jeremy Robertson for the Top Cops Award. After consideration by the Top Cops Committee, our officers were not selected as the winners, but they did make the honorable mention list. The process for selection stretches across the United States and involves many submissions by different police associations for multiple acts of bravery and heroism. The fact that Officers Grego-Smith and Robertson were not selected for this year's award does not in the slightest way diminish the bravery that those two officers, and the arriving and supporting officers, showed that morning. On behalf of myself and the rest of the LVPPA, you are all to be congratulated for a job well done. There is no doubt that you are Top Cops to us, and I hope that this article will be read by every member of the Department. **VB**

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WHY DO YOU THINK

CRIME

IS ON THE RISE?

BY JIM GLENNON

Owner, Calibre Press

A little over two years ago, in August 2013, I wrote an article in which I both scolded and warned the public, the pundits, media types, politicians and, specifically, the ACLU about their negative and incendiary rhetoric toward the police in New York City and law enforcement in general. Their hysterical rhetoric was, at the time, aimed at the court-sanctioned practice referred to as “stop-and-frisk.”

The elites were up in arms about the police using this tactic in high-crime areas where drugs and guns are prevalent. Some referred to the practice as unconstitutional, while others labeled the police as the modern-day Gestapo (the sadistic secret police of Nazi Germany). And, of course, many believed the practice and real motives of the police were based on racism.

Bill DeBlasio guaranteed that he would curb the police and stop-and-frisk would be no more if he was elected mayor of New York. And he was.

It seemed as though no one in NYC wanted the cops to be proactive anymore.

No one except ... many of the citizens who actually lived in the Big Apple. An October 2013 Quinnipiac University poll revealed that public safety was uppermost on the minds of voters. When asked which was more important, keeping crime rates down or reforming stop-and-frisk, 62% said keeping crime rates low. Only 30% said reforming stop-and-frisk.

Why?

Because the citizens, especially those living in high-crime areas, experience the crime, suffering and pain inflicted by criminals who flout the law and prey on the weak. To the people in “police-occupied” neighborhoods, stop-and-frisk was a law enforcement practice that saves lives.

This, of course, didn't matter to those who aren't at risk. They continued demonizing the police. So I offered a solution on how to eliminate the complaints. All the police had to do was *stop working!*

In that article, I tried to explain that for the cops themselves, there would be no downside to this tactical change.

Again: Why?

Because police officers don't get fired for not doing, they get fired for doing.

Cops know there's virtually no risk in getting fired for a process of lousy work and inactivity over a 10-year period. The risk for discipline and perhaps termination comes from being proactive.

Most citizens don't know this, but P# 15111 there are laws on the books in most states that forbid police supervisors from establishing quotas to be met. In other words, you can't legally make police officers write tickets and stop suspicious people.

Officers all around this country know all too well that if they simply answer 9-1-1 calls, drive around aimlessly on their patrol beats and avoid self-initiated activity, they'll still get paid. Hell, that philosophy may get them promoted!

Well, a lot has happened since the summer of 2013 — Ferguson, Eric Garner, Baltimore and Freddie Gray — and the media have reacted and so have the cops.

For the past six to eight months, there's been debate about whether this *stop working* philosophy is actually happening. Have cops taken a less proactive approach?

A RISE IN CRIME

What we do know is this: Violent crime rates are up in many of the major cities; they rose 13% in Los Angeles over last year, homicides were up 54% in Washington, D.C., in 2015, and Baltimore? That city is the deadliest it's ever been.... It's a bloodbath, a cruel bloodbath across America's urban centers. Does it have anything to do with police officers ignoring suspicious people and questionable activity?

Of course it does.

I live right outside of Chicago, a city that saw nearly 3,000 people shot last year, 470 of them fatally. It's the worst in years. I've talked to police officers, including supervisors in two Chicago suburbs as well as in the city of Chicago, and what I'm hearing is that I was quite the prognosticator a year and a half ago.

Illinois just passed a series of laws under the heading “Police and Community Relations Act.”

It should have been titled “The Police Are All Bad, We Know It, So We Are Going to Blame Them for Everything and Eliminate Any Desire in Them to Be Proactive.”

But that would be kind of long, I guess.

One supervisor for a suburban department sent me a 30-page training guide that teaches cops the new laws on how to conduct an investigatory stop. It demands that they articulate — in writing, on the spot and to the person stopped — why they thought the person was suspicious. If they conduct a pat-down, they have to explain not just why they thought the subject might be in possession of a weapon (as required by case law), but why the officer thought that he or she, or others, might become a victim of an imminent attack.

Then, after the encounter is over, the officers have to give the stopped person a receipt with all that information on it, along with a phone number to call if they want to complain about the officer.

Then — I'm not kidding — the officers have to fill out a form for the Illinois Department of Transportation with the following information on it: 1. The gender, and the officer's subjective determination of the race, of the person stopped. The subject's race shall be selected from the following list: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander, or White; 2. All the reasons that led to the stop; 3. The date and time of the stop; 4. The location of the stop; 5. Whether or not a protective pat-down or frisk was conducted of the person, and if so, all the alleged reasons that led to the protective pat-down or frisk, and whether it was with consent or by other means; and ...

I'm tired of typing. But there are five more of these bullet points.

So I asked this commander how many of these cards had been completed in the first 14 days of 2016. His answer?

"One." And then he laughed and said, "I'm not expecting a whole lot more. The law, as of last year, is that we can't make police officers write tickets. We can make them make a certain number of traffic stops, but we can't tell them to enforce the traffic laws they stopped the motorist for."

He admitted that tickets were significantly down, but he said it's not just because of the law prohibiting us from making them write tickets; it's because of the political climate. He said, "Every complaint becomes an internal investigation, which is a blemish on the officer's record. And it's a crapshoot as to who will investigate the complaint. So the incentive to be proactive is gone."

In the city of Chicago so far in 2016, the number of investigative stops is down by about 80% compared to last year. According to an article written by Mark Konkol on January 13, "There has also been a 37% decline in gun arrests and a 35% decrease in gun confiscations compared to last year.... Meanwhile, there have been 72 more shootings (a 218% increase) and 10 more murders (a 125% spike) than during the same time period last year."

You think there may be a correlation between media hype, political response, officer inactivity and the spike in crime?

Finally, I talked with a very aggressive, smart and motivated rookie cop in a Chicago suburb. Here's his take: "The exact same thing is happening in our department. We only have a few officers who ride in two-man tactical cars. They've been identified to be the most aggressive/proactive officers we have and I'm honored to have been chosen to work with that group. But the truth is, we're doing less."

"Officers don't call most of their traffic and street stops out on the radio because they don't want to do these bullshit stop sheets or do two pages of paperwork just because they thought they should talk with somebody who was acting suspicious," he said. "Hell, we'd spend half our night in the station completing paperwork. We even hand people receipts after streets stops and occupied vehicle checks with our name, badge numbers and phone numbers so they can call if they're unhappy."

How's that working?

"We've been getting complaints for nonsense, but the bosses still have to investigate us. A lot of guys just don't think it's worth risking

their jobs, so many have just stopped. And there's nothing the brass can do about it."

And this is now the sad state of affairs in this country.

CONCLUSION

In order to have a protagonist, there has to be an antagonist. In this sad state of affairs, the cops are the bad guys and the criminals are the victims. Everyone from the president to the local editor of the suburban newspaper cites the truth about crime: It's way down since 1990. Until now.

But can you figure out why? Because there are record numbers of bad guys in prison.

Now we want to let those misunderstood wayward souls out while at the same time we are demonizing and handcuffing the police. What do you think the end result for society will be?

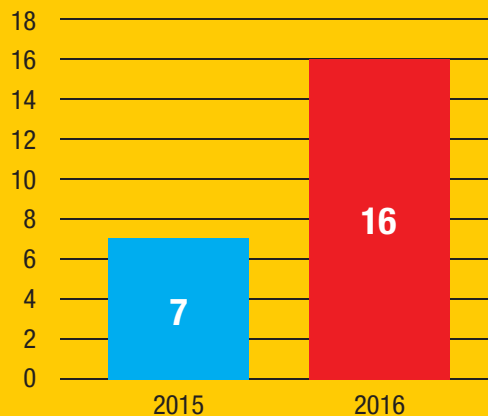
Well, ladies and gentlemen, we are about to find out.

Lieutenant Jim Glennon (ret.) is the owner and lead instructor for Calibre Press. He is a third-generation LEO, retired from the Lombard, Illinois, P.D. after 29 years of service. Rising to the rank of lieutenant, he commanded both patrol and the Investigations Unit. In 1998, he was selected as the first commander of investigations for the newly formed DuPage County Major Crimes (Homicide) Task Force. He has a B.A. in psychology and a master's in law enforcement justice administration, and is the author of the book Arresting Communication: Essential Interaction Skills for Law Enforcement. VB

OFFICERS AT RISK

Intense media scrutiny and rising crime have a tangible effect on law enforcement officer safety as well as public safety. While line-of-duty deaths in auto accidents have steadily declined, fatal shootings are skyrocketing. During the first three months of 2016, the number of officers killed by gunfire nationwide more than doubled from the same period last year.

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Use-of-Force Policy Matters — Pre- and Post-Incident

HENDERSON POLICE OFFICER JAMIE BORDEN

Certified Advanced Specialist, Force Science Institute

As a use-of-force instructor for the past several years, as well as an expert in human factors and an experienced video analyst, I have seen firsthand the disparaging differences between the intended purpose of a policy and how that policy is actually applied in the aftermath of a critical incident, particularly where an officer is expected to use reasonable tactics and objectively reasonable force.

When I started with my department in 1997, I was taught that policy is a parameter, a guideline if you will, and should be carefully studied and applied when it concerned a police use of force. I had questions about policy, but regardless, I always managed to use reasonable force, even before the policy reflected *Graham v. Conner* standards and the calculus for objective reasonableness. Use of force always seemed to be very *common-sense*-oriented, and was reasonable based on my views of what the Fourth Amendment meant to me in my application of newly acquired police authority.

With the onset of digital cameras and cellphone video, the game has changed significantly, and policies need more thought and scrutiny than ever before. Many years later, I became the use-of-force specialist for my department and immediately found it necessary to revamp our policy. The first change was

simply to get it into the current century. Our use-of-force policy had not been updated with any significance in nearly 16 years. After months of research, my first step was to rid our department of the use-of-force continuum, or anything resembling a continuum. With the support of my chief of police, significant changes were made to the policy, and it was vetted out by the department's unions and membership, approved by upper management, submitted proactively to the ACLU and other watchdog groups that closely monitor existing and changing police policies, and ultimately accepted by those groups.

How Do We Train on Use-of-Force Policies?

No matter how well we know policy as police officers, from the line level to command staff or "upper management," this knowledge doesn't change the fact that critical incidents are rapidly evolving, requiring split-second decisions with extreme consequences, and with police officers who are subject to human factors and limitations. During these critical incidents, policy, procedure and trained techniques may fall by the wayside, as they may not be safe or have a low probability of success based on the circumstances. In these uncommon scenarios, an officer is forced to make a "split-second decision," as described in *Graham v. Conner*, based on what he or she is faced with at the time force is employed. For instance, if an officer is in a fight for his or her life, or the consequences of the

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subject escaping outweigh the safety of the public or officers, the officer may not have a “policy-perfect scenario” from which to derive his or her chosen response.

If the officer uses an improvised response in this case, it must be articulated in the officer’s account of the incident. An improvised response includes a tactic or technique that falls outside of policy, is not a specifically trained technique, or is a variation of a specifically trained technique that the officer has adapted to survive, de-escalate or protect the public. To that end, policy must be written to allow for an officer to operate outside of policy guidelines in those infrequent occasions when they are faced with the most dangerous, dynamic and rapidly evolving scenarios that create ambiguity in the subsequent application of policy.

Thus, I believe training should be focused on creating officers who can make thoughtful, balanced, reasonable decisions in a time of crisis. Training on the mechanics of a policy does not create officers with good decision-making skills who are expected by all to perform at a superhuman level, humans expected to transcend the human factors that affect us all. The true task and challenge at hand is creating thoughtful officers who can respond quickly and effectively, and subsequently recall and report “why, where, when and how” force was used and *what* drove the officer’s decision to use such force.

The task of decision-making in a critical and time-compressed incident is one laced with superhuman expectations — not only by the public but by our own peers, supervisors, investigators, management, legal representation and decision-makers. The perception that police officers can and are expected to make perfect decisions is not a condition prescribed by law. This is a volatile mix, combining an officer’s need to use force in a critical incident and a policy that disallows an officer to make an effective split-second decision by placing limitations on tactical choices within the reasonable range of responses. The courts have soundly and consistently prescribed that police officers are not to be held to this unreasonable standard of making perfect decisions in the application of force. This solution is based on limited departmental training and limited application experience, considering the infrequency of these types

(continued on page 14)



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USE-OF-FORCE POLICY MATTERS

(continued from page 13)

of events. Policy should not limit an officer's thought process; rather, it should enable the officer to think outside of the box, defeating the dire results of an improper focus of attention and subsequent improper or unsafe decision.

What About the Policy?

Example policy verbiage: "Officers may not use force or any compliance technique that they have not been trained to use. If an officer uses an improvised technique or tactic, in a dynamic and rapidly evolving situation, the officer will specifically articulate the need to do so. Also, the officer shall articulate and describe the improvised technique or tactic."

The purpose for this is *not* to excuse unreasonable, unnecessary or excessive force, but to allow officers to be decisive based on available training and limited experience, where an officer is subject to human limitations in perspective, perception and action/reaction, and forced to effectively respond to a violent offender in fractions of a second. In these uncommon critical incidents, the officer's decision is very possibly the difference between life and death for the officer or the public, or between detention and escape of a violent offender.

In the climate of today's policing, there does exist a need to prohibit certain police behavior. For this reason, policy is normally focused on the lowest common denominator. This prohibition opens the door for learning and improving a department's approach to use of force, and gives officers a *guideline* as to what is reasonable, if the common-sense gene is missing for some reason. However, with this caveat in a police use-of-force policy, it will allow an officer to articulate his or her actions in the use of force based on a range of responses, not a force continuum. With knowledge of this policy verbiage, officers are more likely to act decisively and reasonably in a fast-paced and dynamic incident. This then allows those responsible for investigating the officer's use of force to approve, disapprove or identify potential issues with the use of force. This

process is also instrumental in identifying elements that may be driving the officer's decision during the incident, which is ultimately where we derive any valuable lessons learned to better our officers and our department.

How Do We Use Policy After the Fact?

In the recent months, I have been involved in some significant arbitrations as a use-of-force expert where a use-of-force continuum has been the cause, possibly a direct cause, of an officer's termination. This is due simply to the misperception that there exists a mechanical application of force in a critically dynamic and rapidly evolving scenario, based on the use of a force continuum in department policy.

As the May 15, 1989, SCOTUS decision in *Graham v. Conner* is the standard for determining the objective reasonableness of a use of force, it is paramount to recognize the spirit of wording in the decision and the directions to the lower courts generated by that decision, and how it *should* apply to police policy as it relates to use of force, how it affects training and how it affects the investigative process, from a low-level use of force to a critical use of deadly force.

There are critical uses of force where it is not possible, considering the facts and circumstances known to the officer, and considering the actions of the offender, to effectively stay within the confines of policy guidelines regarding tactics and techniques. Officers are subjecting themselves to unreasonable scrutiny and possible termination based on a mechanical application of the use of force, an element that is discouraged in the very Supreme Court case law decision that governs and determines the objective reasonableness of the use of force.

As the officer articulates and describes his or her actions, which may have fallen outside of the guidelines established by policy, reviewers will be able to identify the officer's perspective and perceptions, and make a determination of the reasonableness of the officer's actions. Policy that specifically forbids a particular tactic or technique, P# 7777 and does not include verbiage allowing an officer to explain his or her intentions in the application of the improvised tactic, especially in the realm of hands, fists and feet as control or impact weapons, is limiting the officer's ability to effectively de-escalate a potentially critical

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incident. An officer needs to be able to apply his or her training in tactics, known policy elements and life experiences as they apply to a specific incident, considering a unique set of facts and circumstances, and improvise his or her response, tailored to the level of resistance the officer is being faced with at the time, and other factors the officer knows at the time of the application of the force. This is not implying that an officer should use excessive, unnecessary or unreasonable force. It is negligent thinking to expect a policy to cover every aspect of the application of a use of force. In other words, policy cannot possibly list every justifiable and reasonable response in an infinite array of possible force encounters or levels of resistance. This is addressed in *Graham v. Connor*: "Because '[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,' *Bell v. Wolfish*, 441 U.S. 520, 559 (1979), however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. See *Tennessee v. Garner*, 471 U.S., at 8-9 (the question is 'whether the totality of the circumstances justify[s] a particular sort of ... seizure')."

The force continuum or the response continuum, both a fashion of mechanical application of use of force, is not a reflection of objective reasonableness based on the three-prong test (the calculus for objective reasonableness). The use-of-force continuum is systematically being removed from policy across the country, and for good reason. Documents generated by IACP and its primary publication, *Police Chief* magazine, discuss in depth and at length how use-of-force continuums are not an effective element of a constitutionally based use-of-force policy and can adversely affect an officer's ability to make a split-second decision in a critical use of force. The following segment from a document titled *Legal Implications of Force Continuums* reflects the change happening nationwide: "At a recent conference sponsored by the Police Executive Research Forum (PERF), Los Angeles Assistant Police Chief Sandy Jo MacArthur stated that officers are taught 'to evaluate

(continued on page 16)

CONGRATULATIONS

to the contest winners from the last issue!

March/April

Hidden Symbol Contest (\$250)

Kirk Kenton, P# 1720

P# Contest (\$50)

Gavin Groneman, P# 9489

Jason Guerra, P# 8780

Darryl McDonald, P# 14031

Justin Spurling, P# 13647

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USE-OF-FORCE POLICY MATTERS

(continued from page 15)

the entire situation,' and while a continuum is still used in training, it has been eliminated from policy.... 'We emphasize teaching officers to properly respond to suspects' behavior, rather than simply prescribing a formula. This has helped us tremendously in getting officers to understand how to articulate their reasonable response to the incident.'"

Whatever the outcome of the incident, it should be the result of a thoughtful use-of-force policy, a responsible investigation and a fair analysis based on the officer's statements as supported by all other investigative information available, including any video or audio recordings of the incident.

In summary, a use-of-force policy and the verbiage used in the policy is in need of careful scrutiny by policy writers with input from the line level to the top management of a police department. The application of the policy in

the analysis and review of use of force needs to be reasonable and balanced based on current case law, policy, the considerations of human factors and the officer's intentions when the force was applied. Officers need to understand the balance between the need to use force and the liability issues that exist for the department. Line-level supervisors need to understand the importance of thorough on-scene investigations, and the department should be balanced and working toward a cultural change in the matter of use of force, based on the vocation of police work, and not a knee-jerk reaction to outside pressure.

Police departments need to protect themselves from rogue or criminal behavior from officers who shouldn't be officers, protect officers who have signed up to do the job in the selfless servant-based attitude that exists in most officers, and be able to identify changes necessary to improve the department globally through transparency and relationships, both interdepartmentally and with the public.

With six years as a use-of-force, firearms, Taser and defensive tactics instructor with the Henderson Police Department, Officer Jamie Borden is currently the "Use of Training and Analysis Officer," a position created as a part of the Henderson P.D. Model for Use of Force as envisioned by Chief Patrick Moers. Jamie has been instrumental in writing the existing use-of-force policy and has been conducting force investigations for approximately four years. He is a certified analyst and has obtained the Advanced Specialist Certification in human factors from the Force Science Institute. Jamie has been deposed as an expert in human factors, use of force, video analysis and police procedure related to police officers in a critical incident, primarily in arbitrations. Additionally, he has provided testimony and reports in the capacity of expert in use of force, video analysis, police procedures and training. Jamie is currently on staff with the Force Science Institute.

Resources

Ciminelli, Michael L. *Legal Implications of Use-of-Force Continuums in Police Training*. AELE, 2014.

Peters, John G., and Michael A. Brave. "Force Continuums: Three Questions." *The Police Chief*, January 2006. **VB**



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Thaddeus "Toby" Yurek joins GGRM after 20 years of service with the Henderson Police Department, retiring as a lieutenant in 2015. He received his law degree and was admitted to the State Bar of Nevada in 2008. Toby knows first-hand the challenges faced by law enforcement workers and their families. As an attorney, his unique background and experience enables him to serve and protect the needs of those putting their lives on the line every day. **Greenman, Goldberg, Raby, Martinez Law Firm has helped injured people in Nevada for over 45 years. This is our community.**

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03/11/16	Alan D. Freer, P# 4685	CO II	22 years
03/17/16	Patrick D. Rooney, P# 3954	PO II	25 years
03/29/16	Wade Winkler, P# 7974	CO II	17 years
04/06/16	Patrick W. Ledbetter, P# 4984	PO II	20 years
04/29/16	Fred E. Castle, P# 5993	PO Sgt	18 years
05/04/16	Thomas D. Moore, P# 3878	PO II	26 years
05/09/16	James Gustaw, P# 9197	PO II	10 years
05/11/16	Sheri A. Aldrich, P# 4923	PO II	21 years
06/03/16	Mark McEwen, P# 2569	PO II	30 years

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Throughout the entire process he always took or returned my calls ASAP and had a positive outlook. He attacked the case and knew that I was being "targeted." We were both flabbergasted by the outcome of the investigation and an 8-hour suspension that was issued. He immediately kicked in high gear and followed through with a grievance.

Darryl introduced me to Kelly Sweeney, the PPA's Director of Employee Relations. Both Darryl and Kelly went to work and put together a great case. It went through the grievance process and when I was not satisfied with the outcome of that process, Darryl supported me in my decision to take it to the next level. Kelly met with me several times and put a solid case together. Darryl also showed up on the day of my Labor Management Board and attended even though he didn't need to. He was there in support. That meant a lot to me! Kelly presented the case and we were able to prove I was being targeted. We won the Labor Management Board!

I can't thank you guys up there enough for all the help. You guys are a real asset to us.

Thank you,
Jeff Corbett

LVPPA,

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Thank you,
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