



A publication of the Southern States PBA, Inc.

# 2022 BLUE REVIEW

AN IN-DEPTH LOOK AT THE PBA ISSUE 8

**FREE SPEECH ISN'T REALLY FREE:  
WHEN POSTING ON SOCIAL MEDIA, PROCEED WITH CAUTION**

**MY PATH TO THE LAND OF SOBRIETY:  
A MEMBER'S BATTLE WITH ALCOHOLISM**

**LAW ENFORCEMENT LEGAL DEFENSE:  
HOW TO RESPOND IF YOU'RE THE TARGET OF AN INVESTIGATION**



# A SHOOTING OR AN ACCIDENT... NO ONE LIKES TO THINK ABOUT IT!

## IF IT HAPPENS TO YOU:

- Don't panic! Calm down and compose yourself.
- Don't rush into making a statement.
- Call the **PBA Hotline: 1-800-233-3506**.
- The PBA will provide you with an attorney prior to making a statement - either on the scene or wherever needed.
- Wait until you talk to a PBA attorney before making any statements, oral or written, unless you have been given a direct order to do so.

It can happen to any law enforcement officer at any time. There's a shooting or a serious accident and someone is hurt. You're involved. As a PBA member, you're not alone. The PBA is there to protect your rights.

# 2023 BLUE REVIEW

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Reneé Dixon  
Chief Operating  
Officer, SSPBA

Reneé handles the day-to-day operations of the SSPBA under CEO Jack Roberts and has been with the Southern States Police Benevolent Association for 27 years.

*"I strive to make sure that every member's concerns are handled with professionalism and care. If you have any questions or concerns, please do not hesitate to contact me at (800) 233-3506, ext. 349."*

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# SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION BOARD OF DIRECTORS



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# PBA'S RESPONSE TO MEMBER EMERGENCIES INVOLVES ACTION AT MANY LEVELS

BY JONI J. FLETCHER, DIRECTOR OF LEGAL SERVICES



**A**ttorney response to PBA members involved in critical incidents has long been recognized as a key benefit to PBA membership. Several times each week, the SSPBA legal department coordinates attorney responses to members who have been involved in shootings, deaths in custody, or other emergencies where members need to make sure their legal interests are protected. PBA staff, referral attorneys, the PBA legal department, chapter leaders, and members each play parts in helping to ensure that the PBA response works effectively.

**PBA staff members** are on-call around the clock to respond when members call in regarding emergency situations. Once they learn that a member has been involved in a critical incident, they shift into high-gear to make contact with an attorney in the member's area. This initial contact with PBA staff typically comes directly from the involved member as he or she contacts the PBA phone number (800-233-3506). It is not unusual, however, for notification to come from a fellow PBA member or co-worker, or from a PBA chapter representative. Once the staff member has verified PBA membership, he or she begins calling

PBA referral attorneys located near the member.

**PBA referral attorneys** have agreed to make themselves accessible in the event a PBA member needs representation regarding a critical incident. When they are contacted regarding a PBA emergency, they are asked to make contact with the involved member as soon as possible and to respond to the member's location, if necessary. The primary PBA objective in the immediate aftermath of a critical incident is to ensure that the member's legal interests are protected. This involves the attorney's consultation with the member as well as representation during questioning and assistance with the preparation of the member's statement. So long as the member maintains his eligibility for PBA coverage, the attorney is assigned to the member's case until the investigation is closed.

**The PBA legal department** facilitates and coordinates contact between the PBA member and the referral attorney. Our department maintains a list of approximately 650 referral attorneys throughout our membership area. The legal department works to ensure that contact information for each attorney is accurate and up to date so that the attorney can be reached in the event of an emergency. PBA legal works with on-call staff to send correspondence to the attorney to officially open the member's file, and the legal department then monitors the developments of the case. Our department corresponds with the referral attorneys to remind them that PBA staff may be calling if a member in their area needs help. In the event a referral attorney has a question pertinent to a member's case, the legal department has attorneys on staff who have handled PBA cases for many years and who can serve as a resource on legal matters affecting law enforcement officers. In addition, we have recently created a PBA attorney listserv to encourage communication between referral attorneys and to provide an additional resource to support our members' open cases.

**PBA chapter leaders** serve as a local PBA presence for our members and help to ensure that PBA members are receiving the service they need when they have an open case. PBA chapters are critical to the development of the PBA referral attorney list as they are responsible for identifying attorneys who are interested in representing law enforcement officers in matters arising from the performance of their duties.

**PBA members** are the focal point of this whole process. If a PBA member is involved in a critical incident, he or she needs to call PBA as soon as possible. He or she needs to communicate with and listen to the advice of the assigned PBA attorney. If a problem arises with his or her representation, the member needs to inform PBA staff or the legal department so that the problem may be addressed quickly. Above all, the member needs to maintain his or her membership so that coverage is in place until the file is closed. Some critical incidents are quickly resolved, while others drag out for months as the investigations, grand jury presentments and even criminal trials proceed.

PBA strives to ensure that every member's emergency situation is handled effectively, and our efforts to improve our processes are never complete. We are continually working to increase the number of attorneys on our referral list so that response time to our members is minimized. We attempt to inform our attorneys from the time of the initial call regarding what is expected of them as they represent our members. We coordinate our efforts closely to make the process work as efficiently as possible. If a problem does arise, we address it and attempt to resolve it. We ask our chapters and members to share their input regarding the legal services we provide. We know that emergencies are going to happen and that our members expect us to be there when they do. ●

# UNITED STATES SUPREME COURT 2014 UPDATE: CASES OF PRIMARY IMPORTANCE TO THE POLICE COMMUNITY

BY ATTORNEY J. MICHAEL MCGUINNESS, THE MCGUINNESS LAW FIRM

The United States Supreme Court just concluded its 2013-14 term with several cases of major importance to the police community. As the ultimate interpreter of the Federal Constitution and federal laws, the Court has a tremendous impact on the law enforcement community. The Court periodically addresses constitutional claims which apply to employment rights of officers, conduct and use of force standards, and election law. This Supreme Court term included cases in all major areas. This was a term that included a dissent from Justice Scalia that some of his colleagues have conjured up a “freedom-destroying cocktail” in a leading case.

The Supreme Court continues to decide only a very few cases each year. This year, the Court decided only 68 cases. Those cases guide the lower courts on issues of enormous importance to police officers. Many other important law enforcement related cases were turned away. Much constitutional law is left unclear.

The makeup of the Court has changed in the last several years with the last two appointments of Justice Sonia Sotomayer and Justice Elena Kagan. These two Justices have made a positive difference for police officers in several major cases. Justice Anthony Kennedy was the Justice most often in the majority, in 94% of the cases decided. Justice Kennedy was most often in the majority in the 5-4 decisions, as he was in the majority in every 5-4 decision of this term.

The Supreme Court, under the leadership of Chief Justice John Roberts, is widely considered to have whittled away the constitutional rights of police officers in both First and Fourteenth Amendment employment protections. For example, in *Garcetti v. Ceballos*, 547 U.S. 410 (2006), the Court vastly restricted whistleblowing retaliation claims under the First Amendment. Similarly, in *Engquist v. Oregon*, 553 U.S. 591 (2008), the Court completely eliminated the use of the Equal



Protection Clause to prohibit disparate treatment in non-suspect class employment cases. These trends have substantially precluded constitutional protection for police officers by gutting whistleblower speech protection under the First Amendment and equal protection under the Fourteenth Amendment. Another retreat came in *Borough of Duryea v. Guarnieri*, 131 S.Ct. 2488 (2011), where the Court substantially weakened use of the Petition Clause by public employees. This term, however, revealed an improvement in one area of speech protection. In the areas of liability defenses for police officers, most typically in use of force cases, the Court is generally considered to have done better for officers. The recent election law cases spell continued disaster for police officers as extensive dark money from special interests and corporate America will likely continue to promote political candidates at all levels of government, including our courts with more anti-police officer public officials.

Stripped to the simple basics, the trends this term reveal a mixed bag: Officers generally have decreasing constitutionally protected job protection rights but enjoy a better chance of having qualified immunity in alleged use of force misconduct litigation against officers. In the election law realm, police officers are facing greater difficulty.

## LEADING FIRST AMENDMENT CASES

*In Lane v. Franks*, 134 S. Ct. 2369

(2014), in a unanimous decision authored by Justice Sotomayor, the Court decided a case of enormous importance to police officers. The case involved retaliation against public employees because of their testimony. The Court ruled in favor of the employee and held that Lane’s testimony was outside the scope of his job duties and was entitled to First Amendment protection. However, because

of the lack of clarity in the law, the Court found that the individual defendants were entitled to qualified immunity from damages in their individual capacity.

In *Lane*, the employees did not have legal duties to report the information in dispute. The Court qualified its opinion by stating that it was not deciding the issue of speech protection where the employees, such as police officers, have duties that require testimony. Thus, the Court left open for a future case whether police officer testimony is protected by the First Amendment as protected expression. However, *Lane* is a positive step in the right direction for more speech protection for public employees.

Election cases are also of enormous fundamental importance to the police community because elections determine the extent of rights that police officers are provided. In *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), the Court laid a foundation for a major case this year, *McCutcheon v. Federal Election Commission*. In *Citizens United*, the Supreme Court substantially changed election law by ruling that corporate America is free to fund political electioneering broadcasts.

In *McCutcheon v. Federal Election Commission*, 134 S. Ct. 1434 (2014), in a 5-4 decision, the Court declared unconstitutional the aggregate contribution limits created by the McCain-Feingold, Bipartisan Campaign Finance Reform Act. The Court invalidated the part of the Act which provides that an individual

contributor cannot donate more than \$46,200 to candidates or more than \$70,800 to anyone else in a two-year election cycle.

Chief Justice Roberts authored the decision finding that the First Amendment was violated by these financial limitations. Chief Justice Roberts explained that limits on contributions are allowed solely to prevent corruption and the appearance of corruption. The Court concluded that the aggregate contribution limits do not further these goals and are thus unconstitutional.

In *Harris v. Quinn*, 134 S. Ct. 2618 (2014), the Court also struck a blow to public sector union/association organizing rights. In a 5-4 decision, the Court ruled that homecare workers in Illinois do not have to pay dues to public sector unions despite getting the benefits from the union bargaining. The case was a challenge to the public sector mandatory union dues. The employees in *Harris* were not full-fledged public employees. Thus, the Court distinguished the leading decision of *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), which ruled that public employees who chose to not join a public sector union could be compelled to pay an agency fee to support union work that is related to the collective bargaining process.

## LEADING FOURTH AMENDMENT CASES

In *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014), the Supreme Court addressed another alleged excessive force case arising from a vehicular chase. In 2007, in *Scott v. Harris*, 550 U.S. 372 (2007), the Court had reaffirmed use of force standards in a high profile vehicular chase case. In *Plumhoff*, the Court reaffirmed the use of force tests from *Graham v. Connor*, 490 U.S. 386 (1989) and *Tennessee v. Garner*, 471 U.S. 1 (1985). The officers in *Plumhoff* fired 15 shots.

*Plumhoff* reaffirmed application of the deferential split second decisionmaking environment of officers. In a very significant statement regarding the number of shots fired, the Court observed that: “if police officers are justified in firing at a

suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.” The Court concluded both that there was no Fourth Amendment violation and that the officers were, in any event, entitled to qualified immunity. *Plumhoff* is another helpful step in use of force jurisprudence.

In *Wood v. Moss*, 134 S. Ct. 2056 (2014), the Court ruled that Secret Service Agents enjoyed qualified immunity from suit for activities while protecting President Bush from demonstrators. The claims against the agent were based on alleged viewpoint discrimination when anti-Bush demonstrators were moved farther back than were pro-Bush demonstrators. The Court reasoned that the Secret Service has broad authority to protect the Chief Executive including forcibly moving groups who might threaten safety. The Court ruled that there was no clearly established constitutional right in issue, therefore the agents enjoyed qualified immunity from suit.

In *Riley v. California*, 134 S. Ct. 2073 (2014), the Supreme Court ruled that police officers cannot examine the contents of a person’s cell phone as part of a search incident to an arrest without a warrant or exigent circumstances. Chief Justice Roberts’ opinion stressed the substantial privacy interests that people have in the contents of their cell phones. The decision observed that cell phones can include extensive text and photographs, including all aspects of the “privacies of life.” The decision observed that cell phones can contain information from a long period of time. The Court reaffirmed that it previously held that police officers can conduct a search incident to arrest to protect the safety of the officers and to prevent the destruction of evidence. However, neither of these interests would justify examining the contents of a cell phone.

The decision recognized the importance of informational privacy, especially with regard to new technology. This decision will limit the ability of police officers to examine the contents of a person’s laptop or tablet or phone unless there is a warrant or exigent circumstances. This decision may help officers in the context of protecting their informational privacy

in personnel records and other contexts.

In a 5-4 decision, the Supreme Court ruled in *Navarette v. California*, 134 S. Ct. 1683 (2014), that police officers may stop a vehicle based on an anonymous 911 call reporting that the car was driving erratically. In an opinion by Justice Thomas, the Court reasoned that the government’s interest in stopping people from driving while impaired by alcohol or drugs justifies allowing such stops. Justice Scalia authored a dissent and would have required that the police themselves observe erratic driving to justify pulling over a car. The dissent feared that it now will be too easy for someone to have a car stopped just by making an anonymous 911 call. Justice Scalia complained that the majority opinion “serves up a freedom-destroying cocktail...” Id. at 1697. Its too bad that Justice Scalia does not see the erosion of constitutional protections for police officers as a “freedom-destroying cocktail.”

## CONCLUSION

The latest Supreme Court term left many issues undecided. On balance, the police community did better this year before the high Court in *Lane*. The Court’s use of force standards are reasonable. The election law cases are very difficult for police officers.

The Supreme Court has a long way to go in constitutional law before police officers will be treated equally and with appropriate constitutional respect – despite that nearly fifty years ago, the Court proclaimed that police officers are “not relegated to a watered down version of constitutional rights.” *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967). Perhaps one day, some generation of police officers will get there.

*The McGuinness Law Firm concentrates in the representation of law enforcement officers in virtually all types of police legal disputes. The firm provides trial and appellate advocacy, consulting to officer and police associations, research, education programs and specialized advocacy for law enforcement officers. These ideas are gleaned from experience in advising, counseling and representing hundreds of law enforcement officers since 1984.* 🍀



## POLITICS AND YOU: A LAW ENFORCEMENT OFFICER'S GUIDE TO NAVIGATING THE POLITICAL PROCESS

BY DAVID MATTHEW HANEY, REGIONAL DIRECTOR / PAC CHAIRMAN (PBAGA)

**M**any of us in law enforcement are wary of politicians. We know our chiefs answer to them and our sheriffs court them. Most of us are cops for a reason and have zero aspirations to get actively involved in politics. Though, having spent the past decade as a cop, I have found that law enforcement is not exactly apolitical. We express our opinions at the water cooler and debate national politics in-depth. We stay up on our nation's president's foreign relations in the Middle East, yet have no idea what was on the agenda at last week's city council meeting. However, for most street cops, it doesn't go much further than that. Sadly, I know officers who choose not to vote, even in local elections.

For county and city employees (I will come to you later, state employees), our county and municipal elections affect what matters to us much more than what's happening in Washington. For example, our salaries, benefits, and policies are usually on the line every two weeks at our local commission meetings. The elected officials over appointed agency heads decide who our boss will be, how our budgets are divided, what salary increases (or, unfortunately, sometimes decreases) are budgeted, what personnel policies are enacted, how our disciplinary

processes are carried out, and how much our family's health insurance plan will ultimately cost us. The list goes on and on when thinking of just how wide an impact a handful of elected officials can affect us and our families' lives. For the reader who still insists on having nothing to do with local politics, where do you think many of our state and national leaders begin their political aspirations? Remember, both Presidents Grover Cleveland<sup>1</sup> and Calvin Coolidge<sup>2</sup> began their careers as mayors in Buffalo, New York and Northampton, Massachusetts, respectively.

In addition to local offices, state officials have a tremendous amount of responsibility that can impact our lives for the better or worse. The same issues addressed above for local officers (salaries, benefits, policies, etc.), are decided for state officers by their state elected officials. State senators and representatives create the laws we enforce and define how we enforce them. Moreover, these state positions are often stepping stones to Capitol

Hill and/or the White House. Therefore, we need to understand the importance in having a voice in who gets elected to these positions. The United States Constitution already provides us with an excellent avenue to have a say in our government. As law enforcement officers, the Southern States Police Benevolent Association (SSPBA) gives us another avenue.

We, as SSPBA members, have the opportunity to create change and invest in the leaders we want to preside over major issues that can potentially affect us and our families. Every year, SSPBA chapters and divisions organize screening committees to screen candidates for mayor, city and county commission, state representatives, senators, governor, lieutenant governor, and United States senator, among other positions. The way you can get involved in this process is simple.

First, your PBA chapter should have discussions well in advance of the candidate filing dates to decide which races they want to get involved in. This can be based on issues that affect the members related to that particular seat, membership numbers in the areas represented by the seat, and the resources you will have to assist your endorsed candidates. Next, obtain

1 Welch, Richard E. *The Presidencies of Grover Cleveland*. New York: U of Kansas, 1988. Print.

2 Coolidge, Calvin. *The Autobiography of Calvin Coolidge*. New York: U of the Pacific, 2004. Print.

the calendar from your local board of elections in order to know the candidate filing dates and election dates. (Many board of election offices publish their calendars online.) Then, immediately after the filing deadline, a list of qualified candidates should also be obtained from the board of election office. Now, you need to create your screening questions. It is essential you reach out to your members that are in the areas that will be affected by the candidates, once elected. The process should be explained to the members, and ask them what issues they find important. The list should be narrowed down to five or six issues that are devised into two parts: 1) a background paragraph to educate the candidate and describe the need; 2) a question that will elicit a thoughtful answer sufficient to rate the candidates responsiveness to the issue. As an example, the following question was used during the screening of the Glynn County (GA) Commission Candidates on April 8, 2014:

#### Issue: Equipment Deficiencies

Background: Police officers in Glynn County have seen a huge increase in criminals arming themselves with high powered weapons. It is no longer uncommon for officers to respond to a shooting scene and discover bullet casings from AK-47s, AR-15s, or other assault weapons. Unfortunately, it is only a matter of time before one of these weapons are turned against one of our police officers who are seriously "outgunned."

#### Question 4:

Do you support training and arming more officers with rifles; and if so, what steps will you take to insure Glynn County Officers are armed with the proper tools to keep themselves and the citizens they serve safe?

Once the screening questions have been selected, submit them to your division president or executive director. A suitable venue must be decided upon to host the screening. This should be a location which provides a professional environment, free of any distractions. SSPBA staff are always available to assist and will arrange for any fees associated with the location. A screening committee of

at least six members and one greeter should be planned well in advance. Once the location has been arranged and the questions are approved by SSPBA, an invitation will be mailed to each qualified candidate's address on record. The invitation will include your screening questions, the date and location of the screening, and a telephone number for the candidate to call to schedule a time. SSPBA staff will create a schedule for the screening board; therefore, you should frequently check with SSPBA to ensure that each candidate has responded. Often, candidates are receiving so many different letters and documents that the PBA invitation may be overlooked. Reach out to the candidate any way you can, in a professional manner, to ensure they are aware of the screening and have at least been given the opportunity to attend. SSPBA will send a division representative to assist in your screening and they will bring a copy of the screening questions and instructions for each screening committee member, candidate scoring sheets, candidate consent for endorsement forms, and a list of endorsed candidates for the screening committee and chapter boards that must be submitted to SSPBA after the screening. Since we are representing our law enforcement brothers and sisters to potential political leaders, the screening committee members should be dressed in a professional manner in business attire.

To begin, a designated greeter will meet the candidates as they arrive and escort them into the screening room. One screening committee member will welcome the candidate, provide a brief overview of the SSPBA, explain the screening/endorsement process, and ask the candidate to introduce him or herself and to talk a little about himself or herself. A member will then read each question and allow the candidate to answer. It is important that only the question(s) on the form be asked. If a follow-up question is necessary to understand the candidates answer, that is acceptable.

After each candidate has been given the opportunity to answer the questions, the screening committee will vote to recommend endorsement of one candidate per seat. It may be appropriate under some circumstances to abstain from endorsing any candidates. Only candidates who

were involved in the screening may be endorsed, though, candidates may send a proxy on their behalf or attend the screening via teleconference. If the screening committee recommends endorsement of a candidate(s), the chapter board is convened to vote on the endorsement. Once a candidate is endorsed, the endorsement form is completed and submitted to SSPBA. SSPBA will send out a letter to each candidate who participated in the screening process to inform them of the board's decision. Therefore, it is important that we personally communicate with our endorsed candidates to inform them of the endorsement and start the process of building a strong relationship with them.

SSPBA will distribute the campaign contributions to each endorsed candidate via a board member. Some chapters have found this to be an excellent opportunity to publicly announce their endorsement of the candidate and used the event for a photo opportunity. Other chapters, notably Georgia's C.S.R.A. Chapter, have used their division's Facebook pages to assist in the endorsed candidates' campaigns. The chapter should be willing to assist the candidate in their campaign whether it is passing out fliers, participating in call parties, or waving and smiling at motorists on Election Day. If the candidate sees that we are willing to work for them, they will be that much more likely to work for us. As the campaign progresses, use caution when campaigning for your endorsed candidates. Never campaign on duty or while representing your agency. Publicly "trash talking" the opposing candidate should also be avoided when representing either your agency or the SSPBA. Basically, use common sense, and the process should work smoothly.

In conclusion, I hope this article will prove to motivate some in taking advantage of SSPBA's endorsement process next year. Love it or hate it, we depend on politicians. Our wallets, purses, and families ultimately depend on politicians. There are two corners in this ring: some people are in our corner and others are on the opposite corner. We all want elected officials who are in our corner. To achieve that, we have to show them we are in theirs as well. 🍀

# MISSISSIPPI PBA MEMBERS GO INTERNATIONAL WITH STAR

BY BERNA PENDA, PUBLIC RELATIONS COORDINATOR, SSPBA

**M**ississippi Police Benevolent Association members Rob Stuard and Keith Walters are members of a unique organization, STAR, which brings together German law enforcement and law enforcement from the United States to learn from one another.

STAR is a non-profit organization funded by its members and donations from businesses. Formed in 1985 in California, one of the many benefits of this organization is the unique opportunity it provides law enforcement personnel. Members of STAR get to travel, observe and re-examine problems and programs within law enforcement in other countries with the exchange program this organization offers.

The Mississippi Police Benevolent Association has been a supporter of STAR

in the previous years. In 2013 and 2014, PBA hosted German exchange officers in board meetings as guests, giving them the ability to meet and interact with law enforcement leaders from across the state and get a feel for the goals and purposes of PBA.

During a recent visit to Germany, American STAR members from Mississippi, Texas and Oklahoma learned more about how German police officers execute daily duties. Members also learned about riot situations and terrorism, and how German police deals with these types of threats with the use of new gear and other tools.

The STAR organization offers an opportunity to exchange ideas and learn from foreign law enforcement agencies within a two-week visit. During these visits,

STAR members get the opportunity to observe and participate in law enforcement work from other perspectives. Members also create new ideas and find solutions to difficulties they may have experienced while performing their duties.

Participation in the STAR program is open to all peace officers, active or retired, full-time reserves or auxiliary, and full-time civilian paraprofessionals as well as educators, active or retired, whose educational field relates directly to law enforcement.

If you'd like to learn more about STAR or how to be a member, please visit [www.star-ipe.com](http://www.star-ipe.com). If you wish to start an exchange program in Mississippi or any other state, you can contact Rob Stuard at [robstuard@hotmail.com](mailto:robstuard@hotmail.com). 🇺🇸



# PBA CHALLENGES DECISION THAT SETS BAD PRECEDENT FOR GEORGIA LAW ENFORCEMENT OFFICERS

BY DALE PREISER, SSPBA STAFF ATTORNEY



was reinstated after an eight-hour hearing.

The incident also resulted in the PBA member being charged for several misdemeanors. The member was found guilty of disorderly conduct for putting his hands on the arrestee when said arrestee stated that he did not want the member touching him. The arrest was made by another officer due to the fact that the arrestee had yelled at this officer, cursed at him, and completely failed to cooperate in his investigation. The explanation given by the arrestee for his actions was that he did not want to speak with this officer, but, instead, would only speak to two other officers (those officers just happened to be his high school classmate and his track coach).

This case was of great concern to PBA, because affirmation of the conviction would set a harmful precedent for law enforcement in Georgia: if a suspect tells

an officer not to touch them and the officer does so to effect an arrest, the officer could be guilty of Disorderly Conduct. A Motion for New Trial has been filed by the PBA attorney and is currently pending.

We believe that O.C.G.A. § 17-4-20 provides protection to officers placed in this precarious situation. The statute states, in pertinent part, that law enforcement is authorized to use “such reasonable non-deadly force as may be necessary to apprehend or arrest a suspected felon or misdemeanant.” It does not require consent of the arrestee.

The decision in this case puts officers in an absurd situation as, obviously, few subjects willingly consent to having an officer touch them and to being arrested. PBA continues to support our member’s effort to seek a rehearing of this matter; which will, hopefully, end with a more sensible result. 🍀

**A** Georgia member was terminated by his department based on allegations of misconduct during an arrest. His assigned PBA attorney challenged the termination, and the member

An advertisement for the 'Race 4 The Fallen Glow Run'. It features a photograph of two women in the foreground wearing glowing green and yellow glasses, smiling. The background shows a large crowd of people at a night event with colorful lights. The text 'RACE 4 THE FALLEN' is in large white letters, with 'glow run' in colorful, lowercase letters below it. A QR code is visible on the right side of the image. At the bottom, there is a yellow dashed border containing the text '\$5 OFF use code: R4TF2'. Below that, it says 'Register online at www.raceforthefallen.com' and 'Benefiting the Police Benevolent Foundation'.

TEXT “COPS”  
TO 85944

TO MAKE A  
\$10 DONATION  
TO THE POLICE  
BENEVOLENT  
FOUNDATION

\*A ONE-TIME DONATION OF \$10 WILL BE ADDED TO YOUR MOBILE PHONE BILL OR DEDUCTED FROM YOUR PREPAID BALANCE. MESSAGE AND DATA RATES MAY APPLY. DONATIONS ARE COLLECTED FOR THE BENEFIT OF POLICE BENEVOLENT FOUNDATION BY THE INNOGIVE FOUNDATION AND SUBJECT TO THE TERMS FOUND AT IGFN.ORG/T. PRIVACY POLICY: IGFN.ORG/P. TEXT STOP TO 85944 TO STOP; TEXT HELP TO 85944 FOR HELP.

## POLICE AND POLITICS

BY SEAN MCGOWAN, VIRGINIA PBA EXECUTIVE DIRECTOR



I cannot tell you how many times I have heard from law enforcement officers that they have no interest in becoming involved in politics. I suspect that sentiment comes from the constant reports of “dirty political activities” that clash with the upstanding mindset of most law enforcement professionals.

When I hear that resistance to political activities from a member, I try to remind them that politics, at some level, enter into our everyday lives constantly. One definition of politics is “Use of intrigue

or strategy in obtaining any position of power or control.” Discussion, prioritization, deliberation, compromise and decision-making are all employed in our daily lives, making all aspects of life political. By definition, every one of us is involved in politics.

The processes and systems in place, and available to you, as a PBA member are tried and true methods that increase the recognition of the PBA as a representative group for our members. Our professional screening processes impress candidates, who usually leave with a new understanding and respect for our organization. This familiarity remains with the candidate, endorsed or not, elected or not. No matter the outcome of a screening and the following election through this political activity, a relationship has been established.

In September of 2007 Mark Herring was PBA endorsed for the Virginia Senate and was elected to the office. In October 2011 Senator Herring was again endorsed by the PBA and re-elected. During his time in the Virginia Senate, we could always count on Senator Herring to assist us with promoting legislation that our members

support and helping to eliminate legislation that was not beneficial to our members.

In August of 2013 Senator Mark Herring was screened and endorsed by the Virginia Division Board for the office of Attorney General. Senator Herring moved his office across the street from the General Assembly Building in Richmond to the office of Attorney General in January 2014.

As I sat in General Herring’s office during a private meeting this year, I looked out the window and could see the Governors Mansion beside the State Capitol Building. I thought about the long term relationship we have had with General Herring. This reaffirmed to me how important political activities are at the chapter level. I considered how far this relationship may take the PBA in Virginia, and I knew that if our local chapters had not done the initial political screenings I most certainly would not have been sitting in the office of the Attorney General for a private meeting discussing issues important to our members.

Everything is political. 🍷

## ATTORNEY SPOTLIGHT: HUBE DODD

Attorney Hube Dodd of Birmingham has represented SSPBA members since 2007. During that time, his efforts on behalf of members have run the gamut from disciplinary and grievance hearings, to lawsuit representation and criminal defense, to after-hours shootings. Any time PBA has called requesting help, Mr. Dodd has been willing and eager to assist.

Hube Dodd heads The Dodd Law Firm and represents clients in both state and federal courts in both civil and criminal matters. In 2014, Mr. Dodd was recognized by the Superlawyer’s Group and Business Alabama Magazine as one of the State of Alabama’s Superlawyers, having previously been designated as one of the state’s “Outstanding Young Lawyers” in their Rising Star section from 2010-2013.

When asked about his representation of PBA members, Dodd responded, “From early in my career, I have been drawn towards representing policemen as well as veterans of our military. While I have many members of both in my family, I never served my fellow Americans in either capacity, and protecting the legal rights of those that have made the sacrifice it takes to be a member of the military or law enforcement allows me to thank those brave men and women for their service in my own small way. I do my best for every one of my clients, but I will admit to having a particular surge of inspiration anytime I have the opportunity to represent those I consider to be the selfless backbone of our society.”



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# THE TENNESSEE POLICE BENEVOLENT ASSOCIATION ENDORSES CANDIDATES FOR ELECTION

BY BERNA PENDA, PUBLIC RELATIONS COORDINATOR, SSPBA

The Tennessee Police Benevolent Association recently held political screenings for candidates running for various governmental offices. During the screening process Mark K. Pody, John Ray Clemmons, Darren Jernigan, Jeff Yarbrow and Wes Bradley demonstrated why their experiences and values make them qualified to represent the voters of Tennessee.

During the screening process, candidates responded to many questions regarding due process, meet and confer, and family protection for officers killed in line of duty. They also demonstrated that they are committed to making strong effective law enforcement a priority in their



campaign. That is why the Tennessee PBA is proud to announce their support by endorsing Mark K. Pody for House

of Representatives - D46, John Ray Clemmons for House of Representatives - D55, Darren Jernigan for House of Representatives - D60, Jeff Yarbrow for State Senate - D21, and Wes Bradley for U.S. House of Representatives - D8 in the upcoming election on Nov 4, 2014.

Tennessee PBA President Johnny Bohanan said, "Through an understanding of issues important to our membership and a willingness to be a working partner in our efforts to improve and promote the local law enforcement profession, these candidates have earned the support of the Tennessee PBA. We are asking that citizens of Tennessee show their support for these candidates on November 4th." 🗳️

## THE NEW MISSISSIPPI PBA JACKSON POLICE DEPARTMENT CHAPTER ON THE HORIZON!

BY TOMMY SIMPSON, DIRECTOR OF ORGANIZATIONAL SERVICES, WEST REGION



For quite some time, there has been an expressed interest from numerous PBA members of the Jackson Police Department (JPD) to have a PBA chapter exclusively for their department. In response, a chapter, which will be comprised of only JPD personnel, is being established. A steering committee has been established to provide temporary leadership of the chapter in preparation

for an election of the chapter president and executive board.

The election is scheduled to be completed by the end of November 2014. Serving on the steering committee are Deon Taylor, committee chairperson, and committee members Joseph Cotton, Kenyata Gowdy, Mitch Perry and Sonya Todd. Once the chapter election is completed, the newly elected president of the Jackson PD PBA Chapter will also serve on the board of directors for Mississippi PBA.

The formation of this chapter will be of benefit to PBA members within the Jackson Police Department. It will give members greater access to their leaders and enable leaders to keep members better informed on issues of specific interest to them. Having their own chapter president will also give them a more direct voice on the Mississippi Division Board of Directors.

The PBA has represented a growing number of JPD officers for nearly two decades and is honored to be representing

more than half of all JPD officers. This has not happened by chance; it has happened due to PBA standing by our commitment to serve and represent our members.

In these past years, PBA has represented scores of our members at JPD in grievances, disciplinary actions, criminal investigations and civil actions arising from their law enforcement duties. We've represented numerous JPD officers in shootings and other critical incidents, providing them with legal representation when needed, at any time, day or night. In two recent grievance cases involving over 30 JPD members, PBA filed civil suits against the city. These suits were very successful in forcing the city to pay these members the overtime earnings they had previously been denied. The PBA does not get engaged in growing membership through making promises that never come to be. The PBA has kept its commitment of service to the members of JPD for nearly two decades and will continue to do so. 🗳️

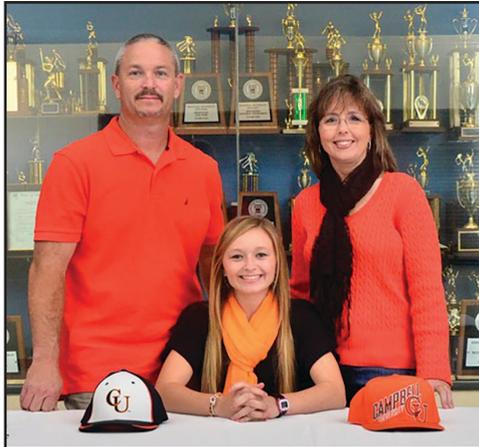
# POLICE BENEVOLENT FOUNDATION AWARDS SCHOLARSHIPS

BY RANDY BYRD, NCPBA DIVISION PRESIDENT

Every year the Police Benevolent Foundation awards division scholarships to deserving students throughout the southeastern United States. The pool of division scholarship applicants come from the children of PBA members. The final recipients are selected in each division after undergoing a strenuous review of their academic record, extracurricular activities, and their commitment to volunteer service. Applicants are also required to submit an essay that can give great insight into their accomplishments and what their future goals are.

In North Carolina, Cierra Harris and Elijah Davis were chosen as this year's recipients. Each will receive a \$1,000 scholarship.

Cierra is from Pikeville, NC and graduated as an honor graduate from Charles B. Aycock High School this year. In addition to being a North Carolina Scholar, she also received the DECA member of the year. DECA prepares emerging leaders and entrepreneurs for careers in marketing, finance, hospitality and management in high schools and colleges around the globe. She also served as chapter president for this organization and as a member at-large for her student council her senior year. Other activity included the Goldsboro Mayor's Youth Council, Fellowship of Christian Athletes, Homecoming Court representative, and School Ambassador. Her charitable work in the community is also noteworthy as she has organized fundraisers through DECA to benefit and bring awareness to those that are hungry in America. An avid softball player since the age of eight, she has been part of numerous state championships and a national championship team for a fast pitch softball team called the Wayne County Hurricanes. During high school she played varsity softball for all four years, winning the state championship in 2012. She was named All-Area player and All Conference for two years while leading the team in stolen bases for three years. She also lettered in



*Cierra Harris (center) with her mother Michelle & father Shawn*

**“These two applicants represent the future and the best of what North Carolina has to offer. We are so proud of their accomplishments and what their fathers have offered in service as law enforcement officers and PBA members.”**

**-Randy Byrd, NCPBA Division President**

volleyball. Cierra's dedication on and off the field will allow her to play Division 1 softball at Campbell University. She plans to double major in Business Management and Marketing and then attend Campbell's law school to obtain her Juris Doctorate degree.

Elijah Davis is from Granite Falls, North Carolina. He attended South Caldwell High School and graduated with High Honors, as a Caldwell County Scholar, N.C. Scholar, Presidential Scholar, and National Scholar. During high school he was a member of the Future Business Leaders of America, Health Occupational Students of America, BETA club, Student Council, Model United Nations Club and the varsity football team. His efforts on the football field earned him two years of

All-County and All-Conference recognition. He also lettered in wrestling and track. Elijah has competed in state competitions for FBLA and HOSA. He also attended the Caldwell County Leadership Academy, The People to World Leadership Forum, and was a nominee for the Hugh O'Brian Youth Leadership Conference. Elijah's volunteer efforts are also notable. He has volunteered for organizations that work to find a cure for cancer and has helped raise funds for those less fortunate in his community. His main interests are in science, and he is attending Appalachian State where he is majoring in chemistry. He hopes to eventually become a pharmacist.

Both Cierra and Elijah count their Christian faith as a very important part of their lives. Cierra is a member of the Stoney Creek Free Will Baptist Church and feels very blessed to have strong Christian influences in her life. Her faith is something she is very proud of. Elijah attends Union Baptist Church, where his father is a pastor. He is very active in his youth group and plays the guitar on the praise team. He is thankful to God for what he has accomplished and what he hopes to continue to accomplish.



*Elijah Davis (center) with his mother Anna and father Myron*

Cierra is the daughter of Shawn and Michelle Harris. Her father is a lieutenant with the Wayne County Sheriff's Department. Elijah is the son of Myron and Anna Davis. His father is a retired trooper with the NC Highway Patrol. For Cierra and Elijah, this scholarship is especially meaningful because of what their fathers chose as a career path. According to Cierra, "Receiving this scholarship is truly an honor considering what it stands

for. My father has always been a big inspiration and has made a large impact in all aspects of my life. Two of his traits that I strive to express each day are compassion and helpfulness towards others." Elijah said, "There is nothing more meaningful than for someone to selflessly devote themselves to the protection and well-being of others. I hope to be a man as great as my father someday. This scholarship is very important to me." 🗡️

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## NICK ELLIS: WHERE DOES HE KEEP ALL HIS HATS?

BY DAVID MATTHEW HANEY, PAC CHAIRMAN/REGIONAL DIRECTOR (PBAGA)

**M**any reading this article were arresting bad guys long before this Jesup (Ga) police officer was even born. Don't let his age deceive you - Nick Ellis' maturity and dedication are well beyond his years. At 26 years old, Nick has accomplished much in his two and a half decades. He has been a police officer with the Jesup Police Department for a little over five years. The Wayne County, Ga native has law enforcement in his blood. Nick's mother, Sergeant Donna Nuriddin, has been a deputy with the Wayne County Sheriff's Office since 1992. Following in those footsteps, in April 2012, Nick was promoted to the rank of corporal. Then, in October 2013, after only four years of service, he was again promoted to sergeant. Nick stays very busy within his agency and his community, wearing multiple hats at home, in church, on the job, within civic organizations, and now politics. Nick's dedication to his community, family, and fellow officers does not go unnoticed.

He is an ordained minister and is a youth pastor at New Creation Ministries in Jesup, a church he has been involved with for over ten years. In 2010, Nick was named the chairman of Jesup's Martin Luther King Celebration Committee. Nick also became the president of the Wayne County High School Basketball Booster Club in 2011. For the past two years, he has served as one of the Board of Directors for the Boys and Girls Club of the Altamaha Area, and he regularly coordinates Wayne County High School

senior activities such as prom, "grad bash," and graduation exercises. In addition, in May 2014, Nick led a successful campaign and was elected to the Wayne County School Board. He will take office in January 2015.

Nick and his wife, Krystal, have two boys, Amarrion (9) and Dominique (8), and in September of 2013, they welcomed their first daughter, Kadence. Despite his exceptional work ethic and numerous community responsibilities,

Nick is a very active father and always finds time to spend with his family. On top of everything else, Nick serves PBA of Georgia members as the president of the Atlantic Chapter. For the past two years, Nick has been very involved in fighting for the rights of his fellow members. His leadership, experience, and maturity are valuable assets to the PBA. After reviewing Nick's remarkable achievements and multiple responsibilities, it seems necessary to ask: Where does he keep all his hats? 🗡️



# RACE 4 THE FALLEN

The logo for the Glow Run event is displayed in a stylized, colorful font. The word "Glow" is written in a cursive script, with "G" in pink, "L" in yellow, "O" in green, and "W" in blue. Below it, the word "Run" is written in a similar cursive script, with "R" in blue, "U" in pink, and "N" in yellow. To the right of "Run" is the hashtag "#R4TF" in a bold, white, sans-serif font. The entire logo is set against a black background with a blue border.

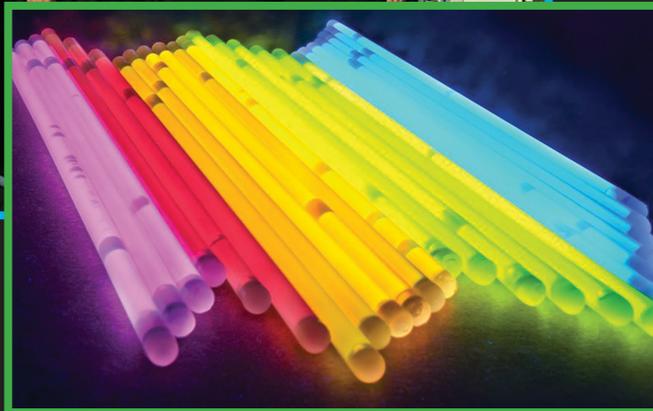
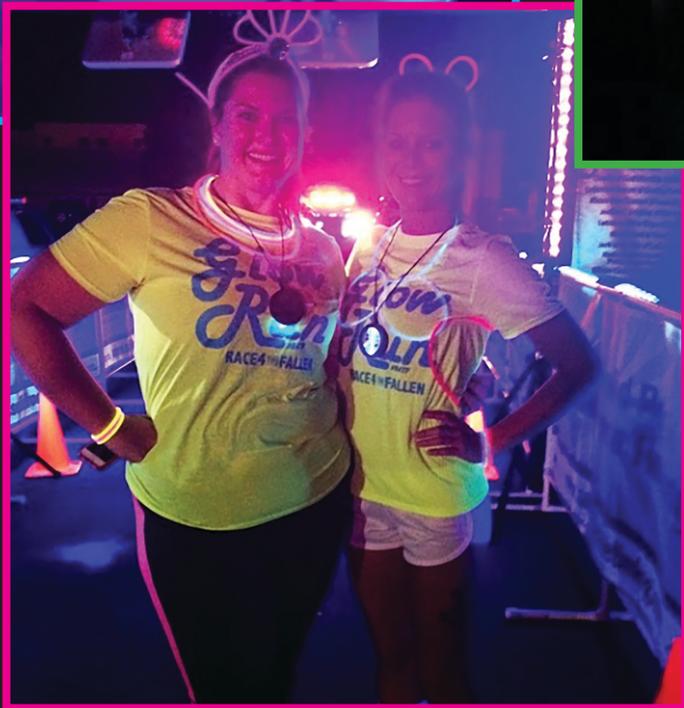
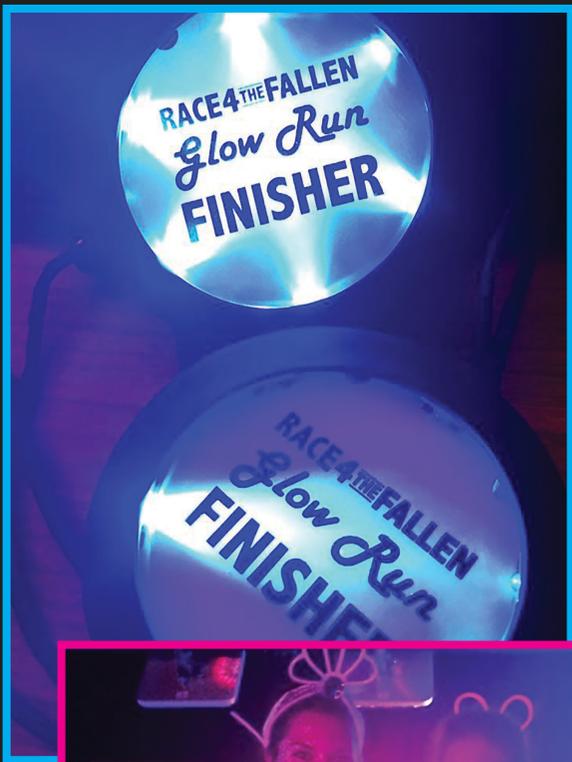
The Police Benevolent Foundation's **Race for the Fallen 5K Glow Run** was created to honor the hardworking and dedicated members of our law enforcement community who risk their lives to protect our cities. These officers are men and women who have taken an oath to "protect and serve" the citizens in our local communities. The R4TF event recognizes the contributions and sacrifices made by not only the officers, but also their families.

The Police Benevolent Foundation exists to support law enforcement officers and the Southern States Police Benevolent Association by providing funds for the families of fallen law enforcement officers, scholarships for youth, disaster relief to officers, and post traumatic stress and suicide prevention seminars to law enforcement professionals and their families.

The Foundation depends on the support of the community through private and corporate funding in order to sustain the very worthy programs and services that it provides for law enforcement professionals and the families of fallen law enforcement officers. The Race for the Fallen is the PBF's signature fundraising series.

**For more information about the race including upcoming locations visit:**

**[RACEFORTHEFALLEN.COM](https://RACEFORTHEFALLEN.COM)**



# OFFICER WEIGHT LOSS

BY JOHN DAWSON, NORTH GEORGIA CHAPTER (PBAGA)



If you're the kind of person who is trying to shave a few minutes off that 5K time, this article may not be for you. That being said, you may know someone who can benefit from this information and my experience. I have had weight issues my whole life. At one time, I weighed over 500 pounds. I had a 68 inch waist before I got into law enforcement. Around 2003 at 32 years old, I decided that I needed to do something about it. I dieted and worked out and got down to 306 pounds. Like most of us in law enforcement, I can be very driven and focused when I need to be.

I was around 320 pounds when I started my law enforcement career working night shift in a county jail. I kept to my diet for a while, but lost focus and stopped watching what I was eating. I did keep going to the gym, which lasted for about six months. I was exhausted from working all night then going to the gym. Yes, all excuses, besides it's easier to eat whatever you want and sleep in. Over the course of the next six years as I progressed in my career, I continued to gain weight, topping out at 457 pounds in June 2013. I was on blood pressure medication and had plantar fasciitis in both feet. My agency had to custom order my size 60 uniform pants. I talked to my primary care physician about my foot pain (plantar fasciitis), and he suggested that I look into surgical intervention for weight loss. What caught my attention in our conversation was that he acknowledged that he

knew I could lose the weight; he was my doctor when I lost weight before, so he knew I had the discipline and focus to do it. He told me he didn't want to have the same conversation ten years from now after I had lost and regained the weight. I had to acknowledge that I never truly got to a "normal" weight. There is a night and day difference between 500 pounds and 300 pounds, but 300 pounds is still 300 pounds.

There have been several people at my agency who have had weight loss surgery, and all have lost significant amounts of weight. As fortune would have it, a few months after my doctor and I talked, I found myself talking with a sergeant at my agency who had lost a lot of weight through surgery and looked great. He told me about his doctor, the procedure, how our insurance coverage worked, and all the medications he no longer had to take for diabetes and high blood pressure. He also mentioned how he no longer had plantar fasciitis. He encouraged me to get in touch with his doctor, Alex Nguyen, and attend one of his informational seminars about the procedure.

I attended the informational seminar where Tracey Whitmire, Dr. Nguyen's nurse, gastric bypass patient, and firefighters wife, shared information and talked about her experience. Dr. Nguyen was very up front from the beginning that you can die from this surgery. I heard the horror stories about people dying and complications from surgery. Dr. Nguyen also stressed that his patients' safety and success is his primary concern for everything he says and does. Dr. Nguyen does not do surgery for people who want to lose weight to look good in a bathing suit. He does surgery to change people's lives. Looking good is a side benefit; health factors are the primary reason for surgical intervention. When I met with Dr. Nguyen, he told me that I have had 41 years to do things my way and now I needed to do things his way.

Now, let's be realistic. As law enforcement officers, we are authority figures, but we don't enjoy being told what to

do and how to do it. Instead of taking it as being told what to do, I took it as a challenge and I would show him by doing everything he said to do.

There are three basic types of surgeries that are done for weight loss intervention: gastric bypass, gastric sleeve, and lap band. Bypass and sleeve are both permanent and are inpatient procedures usually done laparoscopically. The lap band is usually done as an outpatient procedure (23 hour hospital admission). Every insurance policy is different, if they cover surgical intervention, and what the requirements are. My body mass index (BMI) was high enough that I automatically qualified.

Insurance companies typically require the presence of one or more additional disorders (or diseases) co-occurring with a primary disease or disorder in order to cover weight loss surgery. Some insurance companies require more than two comorbidities before approving surgery. Here is a list of common comorbidities of morbid obesity that are accepted by most major insurance carriers: arthritis, sleep apnea, high blood pressure, high



cholesterol, type 2 diabetes, venous stasis disease (Collection of Blood in the Lower Limbs) and soft tissue infections. Less frequent comorbidities that are occasionally accepted by insurance include: congestive heart failure, fatty liver syndrome, gall bladder disease, depression, stroke or stroke risk, inability to carry out daily activities, psychosocial stress resulting from obesity and GERD (Acid Reflux Disease).

Look at it this way: we work in a profession where we use tools, but we don't always think in terms of them being tools. A patrol car, a handgun, patrol rifle, taser, pepper spray, and handcuffs are all tools. Weight-loss surgery is a tool to help you accomplish an objective. It's not the right tool for every situation. However, there are times when pepper spray isn't best option and the patrol rifle needs to come out of the gun rack.

There are some who may say that surgery is the easy way. If someone makes that statement, they have no idea what they are talking about. Surgical intervention gives you the ability and window of time where your physiology is different and

you can establish new habits. You have to exercise and eat right for the surgery to work. You have to change your lifestyle and relationship with your body and food. Eating right and taking vitamin supplements is even more important after surgery to ensure your body is getting the nutrients you need.

The dietary program for post surgery has come a long way. I know people who had the surgery several years ago, and they weren't given a lot of information about what and how to eat. I was provided with a wealth of dietary information, and as part of the medical center's bariatric program, I also had access to a dietician.

I feel that what I have achieved is beyond what a typical gastric bypass patient will be able to do. I have applied that drive and focus, which is common in our profession, to this process. The day I was cleared after surgery, I started going to the gym regularly for cardio and weight training. Yes, there is the potential to lose muscular strength and muscle mass. But making sure your protein intake is adequate, combined with some weight training, lessens the effects.

I began this process with an appointment with Dr. Nguyen in June 2013 weighing in at 457 pounds. I immediately began a program of diet and exercise. The morning of surgery, October 29, 2013, I had lost 117 pounds. In June 2014 I weighed in at 208 pounds, losing 249 pounds in a year, more than half my body weight. I feel great being less than half the man I used to be. I have 34 inch waist and I am a much more capable law enforcement officer. Since I have had so much success, it has given me the opportunity to talk to others about the procedure. I really take the viewpoint that if I can do it, anyone can.

We work in a hazardous profession and are always trying to do things safely. Unfortunately, most of the lessons we learn are from metal on flesh and tragic consequences. Wearing a seatbelt, wearing a vest, passenger side approaches and wearing reflective vests in traffic are all things to make our jobs safer and therefore prolong our lives. Weight loss surgery can have the same effect, a powerful tool to prolong your life. 🍎

## **PBA CONTINUES SUCCESSFUL EFFORTS TO ENSURE MISSISSIPPI OFFICERS AND DEPUTIES ARE PAID PROPERLY FOR OVERTIME WORK**

**BY JONI J. FLETCHER, DIRECTOR OF LEGAL SERVICES**

In March 2014, forty-one Jackson PD police officer plaintiffs represented by the Police Benevolent Association received their settlement checks from the City of Jackson to compensate them for time that the Department of Labor (DOL) told the City it owed to these officers for work performed from 2009-2011. After refusing attempts by the PBA and its attorney, Jeffery P. Reynolds, to resolve the dispute in 2012 by simply having the City pay the officers the overtime amounts which the DOL calculated were due to each officer, the City ended up paying each plaintiff double the DOL amount, plus interest and attorneys' fees. The settlement totaled \$177,500.

The DOL began investigating the City in 2011 after multiple officers complained that they were being forced to work overtime without proper pay. The DOL

investigation resulted in a finding that 255 police officers (over half the police force) were owed money. Rather than complying with the DOL directive and paying the officers what they were owed, the City dictated that the officers could only recover comp time, not monetary payment. The officers, though, were justifiably unwilling to concede this point.

"We were confident from the beginning that we would be able to get the City to pay our members the money they were owed," said Tommy Simpson, executive director of Mississippi PBA. "What is so unfortunate is that the taxpayers are now paying more than double what the dispute could have been resolved for. This isn't the first successful lawsuit we've filed against Jackson P.D. over overtime pay. We hope it will be the last and that the

City will pay its officers appropriately going forward."

Similar problems have been faced by employees with Hinds County Sheriff's office and were brought to the attention of PBA late last year. After the county refused to settle the issue, PBA attorney Francis Springer filed suit in February 2014 against the county for violations of the Fair Labor Standards Act (FLSA), including forcing employees to bank more comp time than is permitted under FLSA, calculating overtime at improper rates (one hour for one hour, instead of one-and-a-half hours for one hour), and failing to pay an employee the full amount of his banked comp time when he left employment. PBA is expecting a favorable outcome in this lawsuit as well, as the county has been shown to be in clear violation of the law. 🍎



# POLICE LINE DO NOT CROSS

## INVESTIGATIONS: 10 THINGS NOT TO DO THE TOP WAYS CRIME SCENE INVESTIGATIONS GET SCREWED UP

BY LT. JIM GLENNON

I spent almost half of my career in investigations. I was even commander of the investigations division of our county's homicide task force for six years. I studied the craft, trained, read and worked hard. Still, what I don't know about investigations could fill a generally large receptacle. What I was good at was being incredibly lucky.

As commander of investigations I was fortunate enough to have an organized obsessive-compulsive Sgt. Dave Kundrot. Alagna, Vasil, Malatia, Abenante, Wirsing, Nevara, Heim, and Belanger were exceptional detectives and self-starters. On the task force I found the same luck. There are too many to count who were at the core of an incredibly successful and effective team. My skill was in assigning them based on their individual talents. So with my experience in mind, the editors at Law Officer asked me to put together a list of the top 10 things not to do at a crime scene. So here goes.

### **1. Don't cover the body with a blanket.**

I've seen this done several times, usually

by inexperienced police officers. But they aren't the only culprits of this evidence-destroying practice. Often the guilty parties are firefighters, emergency medical personnel and well-meaning citizens.

I explained to fire supervisors many times about how covering bodies transfers material, contaminants and other evidence from one part of the crime scene to another. They politely listened and told me they got it. But, they didn't get it. Next dead body—a blanket on it.

When questioned why their response was always a version of: "We're just preserving the integrity of the dead person." And no matter how many times you explain, "He's dead so integrity isn't his biggest issue!" many, not all, just had a hard time grasping that concept.

Solution: Make them watch 200 episodes of NCIS.

### **2. Don't unload or secure guns in an already secure crime scene.**

Early on in my detective career I

responded to a guy shot in an apartment. When I arrived a senior patrol officer—training a recruit—had two guns that belonged to somebody unloaded and handcuffed together on top of the refrigerator! It was a condo with no one present but the two uniform cops!

I asked the officer why he moved the guns and he said with a condescending tone, "Needed to make the guns safe." I queried: "Safe from who?"

"Ya never know," he snorted.

So I continued. "Did you take a picture of them before you moved them? Did you make sure you didn't smudge fingerprints? Did you read them their Miranda rights before you hooked them up and detained them on the fridge?" He wasn't amused.

### **3. Don't let a parade of curious cops walk through any crime scene.**

One of the first shootings I was involved in was in a neighboring town and I was just a back-up watching the rear door. But

what I noticed after entering the house was how every officer working that night walked into the crime scene so they could see the gore. They stepped on pills, kicked bullet casings and literally picked up the deceased in order to peek at the entrance wound in the back of the dead guy's head.

**Bottom line:** Even if you find it for some reason fascinating, restrain yourself and do your job.

#### 4. Don't fail to keep a comprehensive log of everyone who walks into a crime scene.

And when I say everyone, I mean EVERYONE. That includes bosses, chiefs, mayors, aldermen, prosecutors, the chief's mother, the mayor's neighbor and nose cops.

Let them know you're logging their entry. Better yet, try to keep them out. Suggest that they might wind up in court or in a deposition if they're on the list. Then—watch 'em run.

#### 5. Don't be afraid to take charge.

I don't care if you are a rookie with three weeks experience: If you're the first one there, TAKE CONTROL OF THE SCENE. Relinquish it when someone shows up who outranks you or who actually knows what they're doing, but, believe me, controlling the scene will be greatly appreciated by those who need to investigate and are concerned about scene integrity (see: the O.J. Simpson case).

#### 6. Don't forget to take pictures.

Take 'em soon. Take 'em often. You never have too many (see below). Start shooting as soon as it's tactically safe to do so. **Remember:** Use anything you can for scale or to establish positioning.

#### 7. Don't take stupid pictures.

Cops pretending they're kissing the dead guy's ear doesn't look good in court. Putting funny hats on the victim or placing cigarettes in the mouth are also bad ideas. Pictures of officers playing with sex toys found in the closet are not only unnecessary, they're discoverable and tough to explain to three grandmothers sitting on the jury. Smoking or drinking at the scene

is also a big no-no, made even more so when it ends up in a picture.

You're professionals, so act that way!

#### 8. Don't overdo Miranda Warnings.

First understand the parameters of the decision. Know what custody is and how the court views it (from the perspective of a reasonable person in the position of the suspect). And the warnings only have to be read once if they're done correctly.

**Document:** when they were read, by whom, how (should always be from a card in my opinion), where exactly, who witnessed them (have at least one person if possible), and what was the response of the suspect (what they actually said). That part is important. Remember they have to understand and waive them.

#### 9. Don't forget to keep a timeline.

As soon as you can, get that thing going. Use the same timepiece for each entry whenever possible, and coordinate with dispatch times. Try to be precise but allow for some approximates. It ain't an exact science but using the timeline

shows professionalism and an attention to detail.

#### 10. Don't discard your notes.

There is case law about this issue, so it's better to save any notes you take, even if they are on a napkin. All is discoverable. Therefore, write them as though you were a professional, because after all you are. Jotting down juvenile jargon such as: "Found the punk hiding in the closet" isn't recommended.

**Conclusion:** So there it is. A short, abbreviated list of 'don'ts.' Maybe too simplistic and rudimentary for some, but reminders are a good thing.

At some point everything you do, say, don't do, don't say, write or don't write may be an issue for a professional defense attorney or plaintiff's attorney and brought up in court. Remember: You live and die by what you write in your reports. You live and die professionally by how you conduct yourself. And know this: if you screw up one investigation, it can affect your subsequent investigations for years to come. 🍌

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Never let your gun get in the wrong hands.

Your family, friends and neighbors are all counting on you. If you own a firearm and are not using it, please be responsible and be sure that it's always stored in a safe place. Visit [nccp.org](http://nccp.org) to determine the best firearms safety solution for you.



# PBA HONORS JUDGES WITH EXCELLENCE IN JUDICIAL SERVICE AWARDS

BY RANDY BYRD, NCPBA DIVISION PRESIDENT



Administrative Law Judge Fred G. Morrison Jr. offering his appreciation to the PBA

The PBA has had a long history of representing our members through every court system and through the North Carolina Office of Administration Hearings. Our work before these bodies has given us the opportunity to observe those judges or justices that have consistently and professionally earned deep and profound respect from the bench.

On February 15, 2014, the PBA chose to honor two of the finest judges to ever serve North Carolina with our Excellence in Judicial Service Award as part of the 8th Annual George Almond Officer of the Year Awards banquet in Cary. Executive Director John Midgette presented the awards.

These two judges were not selected for awards based on rulings in a few cases, but based upon their decades of excellence in judicial decision making and respect for the rule of law.

Judges Howard Manning and Fred Morrison are similar in many ways. They both have tremendous work ethic as they labor long and hard over challenging and often enormously important legal issues. Both of them have also demonstrated the

highest integrity and dedication to the rule of law while treating our members, witnesses, and parties who appear before them with respect.

Judge Morrison and Judge Manning have heard many law enforcement employment cases, certification cases and police liability cases. They have both authored decisions which have been affirmed and praised by appellate courts, commentators and others.

The decisions by these judges have given us very helpful and needed guidance on the application of the law to issues confronting police officers.

These judges understand what making a dangerous split second decision means; they know the difference in an honest mistake and misconduct; and they understand the workings of retaliation and disparate treatment.

## THE HONORABLE HOWARD E. MANNING, JR.

Through his service as a superior court judge and as a lawyer, Judge Howard Edwards Manning, Jr. has had a far-reaching impact on the law and public school education in North Carolina. Judge Manning earned his undergraduate and law degrees at UNC, finishing in 1968. Judge Manning served four years as a Navy judge advocate general officer before returning to Raleigh and joining his father's law firm. He practiced law for 16 years, including arguing a case before the United States Supreme Court. Judge Manning has served on the bench since 1988.

Judge Manning has presided over hundreds of civil and

criminal cases and has been chosen on numerous occasions to oversee highly complicated cases.

He was chosen to preside over *Leandro vs. State of North Carolina*, a lawsuit filed in 1994 on behalf of students and parents from five low-wealth counties. The plaintiffs claimed that the state was in violation of the Constitution because their school districts were unable to raise adequate funding to provide equal education to all students. Judge Manning's work has led to better law and better education for the children of North Carolina. Judge Manning has similarly issued many important decisions in cases involving police officers.

## THE HONORABLE FRED G. MORRISON, JR.

Through his service as an administrative law judge, prosecutor, lawyer and public servant; Judge Fred Gilbert Morrison Jr. has served North Carolina since the mid-1960s.

Judge Morrison graduated from Wake



Superior Court Judge Howard E. Manning Jr. accepting award from NCPBA Executive Director John Midgette

Forest Law School in 1963 and has not rested since then. Governor Dan Moore appointed Judge Morrison to serve as solicitor of Thomasville Recorders Court. Judge Morrison also served several years as attorney for the Thomasville City Schools, and he was also in private practice.

In 1969, Governor Bob Scott appointed Judge Morrison to join his administration

as legal counsel to the governor. Judge Morrison served in that position until becoming the first executive director of the North Carolina Inmate Grievance Commission in 1974.

Judge Morrison began his service as an administrative law Judge with the North Carolina Office of Administrative Hearings in 1986. For the last 28 years there, he has administered a lot of justice. Judge

Morrison is also highly respected for his extraordinary service as a mediator in cases assigned to other judges. He has a unique ability to make parties understand the risks of litigation.

Judge Morrison has successfully tried many hundreds of cases, including many complex cases and he has issued decisions that have inspired better conduct by officers and management. ●

## SOUTH CAROLINA PBA'S COLUMBIA CHAPTER IS ON THE RISE

BY BERNA PENDA, PUBLIC RELATIONS COORDINATOR, SSPBA



Columbia Chapter President Joseph Czeladko

have more than doubled since Joseph Czeladko became the new chapter president.

Czeladko says, “The PBA is huge up north. I call it northern pride and a brotherhood because that’s what it truly is. When the opportunity arose to become the new president for this chapter, thanks to previous president Robert Calby and board members Boyd Web, Bob Allmann, and Jon Van Houten, I knew it was a chance to bring what I learned up north, as well as that work ethic and drive to the SCPBA, here. All of this wouldn’t even be possible if it weren’t for God and those gentlemen.”



Columbia Chapter Vice President Kevin Rinehart

**T**he South Carolina PBA’s Columbia Chapter has been seeing a big increase in its membership numbers lately, thanks to two police officers who have been focused and highly motivated to bring success home. Joseph Czeladko, a former New Yorker and Columbia Chapter president, and Kevin Rinehart, an Ohio native and Columbia Chapter vice president, joined the PBA with thoughts of making a difference in their communities.

Being new to the southern way, the duo brought northern pride and brotherhood into their chapter and the rest was history. Their new recipe seems to have worked very well since the Columbia Chapter is seeing more than a 25% growth just in the recent months, and their numbers

In 2013, the chapter appeared before Columbia City Council and presented some issues related to compensation and retention within the department. Directly after this presentation City Council voted to begin a full comp and class study, which they are currently performing. This presentation led to several interviews in the local media and expanded the SCPBA Columbia Chapter’s local profile within the community.

In the fall of 2013, the Columbia Chapter also successfully backed the winning candidate in the mayoral race and assisted the election of their candidate by campaigning door-to-door, appearing in a local commercials and assisting at a press conference.

Joseph Czeladko and Kevin Rinehart now meet with the chief of police monthly, and have developed an open line of communication, which has already resolved several issues for PBA members before they grew out of hand.

Rinehart says, “We hope to continue with the forward momentum the Columbia Chapter has established. This means we will continue our vetting and backing of candidates in local political races. Also, we want to continue our aggressive recruitment of new hires with an end goal of 100% membership. The current comp and class study is our biggest issue and the focus of our chapter moving into 2015. Our priority is to ensure our members and coworkers get proper compensation for their dedicated work.” ●

# TO BE A LAW ENFORCEMENT FUNCTION OR NOT TO BE... THAT IS THE QUESTION!

BY CHARLIE CORDELL, SSPBA STAFF ATTORNEY



However, the decision regarding whether a member's situation qualifies as a law enforcement function is not always clear. At its most basic, law enforcement functions are those actions that are considered "traditional" police functions, i.e. patrolling, responding to calls, writing tickets, making arrests, etc. While not an exhaustive list, law enforcement functions do not include matters arising from the member's personal life, intentional criminal acts or policy violations, or actions where a member does not have law enforcement jurisdiction.

For clarification purposes, please consider some misconceptions that some members have expressed.

## **"I was on duty when it happened."**

PBA assists members in matters arising from the performance of their jobs. However, not everything that occurs while a member is on duty qualifies as law enforcement action. Driving while impaired, an altercation with a spouse, willful criminal action such as theft are examples of actions that conceivably could occur on duty which would not be eligible for coverage.

## **"It's affecting my job."**

The incident itself must be law-enforcement related. A complaint by a former girlfriend regarding the officer's personal life may lead to consequences at work, but such personal incidents are not law enforcement action.

## **"Police officers are always on duty."**

In order to qualify for PBA coverage, the

member must have legal jurisdiction to act as a law enforcement officer. Determinations of jurisdiction vary by state and by agency.

## **"I need an attorney, so PBA needs to help me."**

The PBA focus is on assisting members with matters arising from their jobs, not for speeding tickets, divorces, real estate transactions, etc.

When the underlying incident does not arise from a law enforcement function, the member's request for service is denied and PBA staff direct the member to contact a local attorney at his or her own expense. Often, PBA staff are able to provide contact information for attorneys in the member's area who may be able to assist.

PBA's purposes in reviewing each request for service are to ensure that association policy is followed so that members are treated fairly and PBA dues are expended efficiently. All members who have a need for service which they believe is eligible for PBA coverage are encouraged to contact the legal department to discuss their issues. PBA works to thoroughly review each request to obtain the pertinent facts and make a fair decision.

While it is true that some requests are not eligible for coverage, our department takes pride in our daily efforts to assist members. At any given time, there are more than 800 legal cases open for members. The job of the SSPBA legal department is to assist our members in matters that arise from their performance of their jobs. We take that job seriously and work very hard to do it well. 🍀

**T**he SSPBA legal department fields calls daily from members requesting service. Before proceeding with assignment of attorneys, PBA staff are tasked with determining whether those members qualify for representation according to our policies. While most situations are clear cut (i.e., duty-related shootings, complaints filed by arrested suspects, pay issues, etc.), some coverage determinations require further evaluation.

In order to qualify for PBA legal representation, (1) the member must have been a PBA member on the date of the incident, (2) the member must be a current member on the date of the request for representation, with no lapse in membership in the intervening time, and (3) the underlying incident must have been within the scope of the member's official duties in performing a law enforcement function. The first two requirements are easily determined and understood.

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## PBA SUCCESSFUL IN FOUR TERMINATION APPEALS

BY WARDELL WILLIAMS, PRESIDENT OF THE NC CORRECTIONAL OFFICERS CHAPTER

In the past several months, PBA attorneys have successfully argued for job reinstatement in four different appeals to the Office of Administrative Hearings, on behalf of Correctional Officers Chapter members.

In June 2012, Shannon Baker, probation officer, was terminated by the agency due to false allegations by one of his probationers. Mr. Baker immediately requested representation through the PBA. Attorney Glen Barfield was assigned to represent him. In August 2012, Mr. Barfield successfully argued to the North Carolina Employment Security Commission that Mr. Baker was entitled to unemployment compensation. At about the same time, Mr. Barfield filed a contested case petition with the Office of Administrative Hearings (OAH) appealing Mr. Baker's wrongful termination.

In December 2013, Mr. Baker finally had his hearing before an Administrative Law Judge (ALJ). At the conclusion of the evidence, the ALJ took the case under advisement. In February 2014, the ALJ ordered Mr. Baker's full reinstatement to his previous position with all back pay and benefits. The ALJ also awarded reasonable attorney's fees, which resulted in a reimbursement to the PBA.

In the second case, member Larry Hinton was terminated from Polk Correctional Institution for inadvertently bringing his cell phone into the facility. Due to a medical issue, Mr. Hinton was exempted from walking through the metal detector. Instead, he was to be patted down prior to admission to the facility.

On the date of the incident, Mr. Hinton left his cell phone attached to his belt clip in plain view. If he had received a proper pat-down, the gate officer would have seen his phone and he would have been allowed to return it to his car. Unfortunately, that did not occur, and Mr. Hinton lost his job. Attorney Heydt Philbeck was assign to represent him in the contested case before the OAH.

The contested case was heard by the ALJ in December 2013. Attorney Philbeck successfully argued that Mr. Hinton should not have been terminated because there was a breakdown in the pat-down process on the date of the incident. The ALJ ordered that Mr. Hinton be reinstated with full back pay and benefits, with an award of attorney's fees.

On March 1, 2012, Sammie Hardin-Watts, a probation and parole officer from Buncombe County, was terminated for unintentionally leaving her firearm in her office's restroom. During the investigation, Ms. Hardin-Watts took responsibility for her actions, but asked for leniency in her punishment. However, none was given. After a thorough review by the NC Correctional Officers Chapter and the PBA legal department, Ms. Hardin-Watts was approved for representation. Mr. Philbeck was tasked with representing her before the OAH.

In May 2014, a negotiated settlement was obtained in Ms. Hardin-Watts' favor. The state agreed to pay her all back pay and benefits. Additionally, the state agreed

to a partial reimbursement of attorney's fees. In exchange, Ms. Hardin-Watts agreed to a reassignment from the position of probation and parole officer to judicial services coordinator. Ms. Hardin-Watts is satisfied with the reassignment, as she had applied for this position in the past and was not selected.

The final appeal involved a member who was terminated in September 2012 for being in a non-alert status. The member denied being non-alert. The member contacted PBA for representation, and Mr. Philbeck was assigned to represent her in the OAH appeal. The appeal was timely filed, and in November 2013, all parties agreed to a negotiated settlement prior to the trial. As part of the settlement, the member was reinstated with full back pay and benefits, with partial reimbursement for attorney's fees. In exchange, the member agreed to an 18-month written warning for being non-alert. The written warning was applied retroactively to the date of her termination, and it expired in March 2014.

These are just a few of the employment cases taken on by PBA on behalf of our members. As is evident from these recaps, the OAH appeals process is a long and arduous one. Without PBA involved to cover the legal expenses, few employees would be able to withstand the financial drain of such a process.

At this time, we have eleven (11) appeals underway for NCPBA corrections members. We look forward to more successful results like these. 🍀

# DEADLY THREATS: THE LONGEST 10 SECONDS

BY BRADLEY NICKELL, STAFF WRITER FOR POLICE MAGAZINE

In a deadly force situation, anything can go wrong and all you will have to fall back on is your training. . . And if you're lucky, your fellow officers.

The high-priority call sound chirped on the police radio and the dispatcher said, "3-Baker-4, copy a call. A man armed with a knife is stabbing himself in his sister's backyard."

It was a hot evening in Las Vegas near the end of May in 1997. I had been a field training officer for a couple years and had a new officer with me. We also had an academy recruit on a ride-along in the back seat. My car was a full house with only one seat left for bad guys that night. As we headed toward the call, more details came in from dispatch on the mobile computer. The suicidal man was named Jose and his sister was the party calling the police. Jose was high on drugs and had wrecked his sister's car so now he wanted to kill himself out of guilt. I told dispatch that we were responding. Little did I know that I was about to face the heart-racing and potentially life-changing experience of a deadly force situation.

I'll get back to my story in a moment but first I want to impart some hard learned wisdom that might help you win a deadly force encounter.

## PRACTICE UNDER STRESS

You are a cop. And what cops do is run toward danger and deal with it as it comes. So you have to ask yourself, are you ready to confront that danger? When you train, do you do it with the understanding that it might be real someday? Whether it be defensive tactics, building searches, firearms training, emergency first aid, or any other kind of training, do you practice the way you want to react under stress? You should. Every study ever conducted on performance during combat has shown that humans revert to what they've practiced when facing intensely stressful situations. If you train for it, it won't be foreign when your mid-brain kicks in and you



start to lose fine motor control. But the scientists running those studies have never faced the threats that you encounter on the job. So don't read their studies. Talk to veteran cops and take their advice because their practical experience has proven exactly what the studies have evidenced: People fight as they train when they are under stress. If you are poorly trained, it will show up when your life is on the line. Practice doesn't always make perfect, but practice might be enough for you to prevail or at least survive.

The most stressful situation a police officer can face is an unexpected deadly threat—someone wanting to kill you or another person. You must react to it. And you don't have time to think. If you have time to think, there might be another solution. If there's another solution, it's not a deadly force situation. But when you have to react to an imminent threat, you will revert to what you've practiced. No ifs, ands, or buts about it.

## GUNS CAN FAIL

One of the most important things you can train for is a situation where your firearm doesn't work properly and you're faced with an imminent deadly threat. Weapons malfunctions with

semi-automatics happen for a variety of reasons, but the most common can be placed into four groups:

- Failure to fire, which includes an empty chamber, ammunition failure, unseated magazine, and/or mechanical failure of the weapon.
- Failure to eject the spent case or a "stove pipe."
- Failure to achieve battery, meaning the slide didn't fully go forward. This is usually caused by a dirty weapon, weak recoil spring, bad ammunition, or something coming into contact with the slide while firing.
- Double-feed, meaning a round is chambered after a spent case was not ejected and a second round is in the breach.

You need to train to clear these malfunctions. And when you train to clear them, make them and the stress you experience real. Stagger inert dummy rounds with live rounds in your magazines during training. Do some jumping jacks and push-ups on the range before you start each drill to get your heart rate up. Have your partner set up a double feed or stove pipe jam and holster your gun before you have to execute a timed shooting drill. Practice your immediate action and remedial action drills.

Marksmanship is great. But marksmanship while operating tactically is golden. These and many more training scenarios that your rangemaster can provide might punch your ticket to a long and prosperous retirement someday. But failure to prepare for the worst might bring a really bad day to your family that won't ever go away.

## OVER THE WALL

OK. Back to my story.

The call was updated with information that Jose, covered in blood, had fled his sister's backyard and was jumping walls. We came into the area, and I had my new officer drop me off one street west of the sister's house.

"You take the car around the block," I

said to my new officer. “Let dispatch know I’m on foot. I’m going to go through some of these yards and meet you on the other side. And don’t let the recruit out of the car on this one.”

I approached a cinderblock wall that was about chest high and easy to climb. I looked over it and saw the courtyard of a small apartment dwelling—nothing out of the ordinary. The courtyard was completely enclosed by the apartment building and block walls. The only exit was through an iron gate at the far end about 60 feet away.

A quick hop and over the wall I went. As I dropped onto the ground, I realized the wall was much taller on this side, about a nine-foot drop.

At that very moment, Jose came around the corner of the building about 30 feet away. He was covered in blood from neck to waist. His once white T-shirt was splashed with crimson and the numerous cuts and holes in the fabric meant this wasn’t something out of Hollywood.

“What’s up, homie?” Jose said as he pulled a kitchen knife out of his pants. “Why don’t you just shoot me, homes?” He stabbed himself in the abdomen five or six times as he walked toward me. I pulled out my duty weapon, a Smith & Wesson 5906 9mm semi-auto, and trained it on him. “Put down the knife, Jose. Don’t do this!” I yelled. I continued to give commands as Jose closed the distance.

## FACING THE THREAT

You have been or should have been taught that someone with an edged weapon can close a distance of about 21 feet and cause serious bodily harm or death before you can pull out your gun and stop the threat. It’s about reaction times. But I already had my gun out and it was trained on the threat so I figured I could give Jose a few more feet.

I retreated back to the wall I had come over and had nowhere else to go. Jose continued to close the distance while telling me to shoot him. It seemed clear that this was the proverbial suicide-by-cop scenario that occurs all too often in our communities.

Jose made it to about 15 feet away and I could wait no more for him to comply. I pulled the slack out of the trigger and waited for the bang. The trigger went all the way back to the frame. Then followed the loudest silence I have ever heard. Everything was in slow-motion. No click.



No bang. My gun failed to fire. I quickly executed a failure drill—tap, rack, reassess. I knew that if I couldn’t get my gun to fire then Jose was going to stab and possibly kill me. But fortunately, I was spared that stab wound.

While I was clearing the weapon malfunction, my sergeant appeared in the courtyard at the gate and yelled, “Jose!” Jose turned toward my sergeant and ran for the gate. In a fraction of a second, he was no longer an immediate threat to me. The distance between Jose and my sergeant was about 60 feet so he wasn’t a threat to him either.

Jose ran through the gate out to the street where he was corralled by a handful of officers. Jose fell down and was dog piled as one officer held his knife arm down. Another officer struck his hand with a PR-24 to knock the knife away. He hit Jose’s hand so hard that the knife blade broke off of the handle.

The danger was over. Jose was subdued and taken to the hospital with more than

20 stab wounds to his chest and abdomen. But the good news was that no officers were injured. And Jose was alive.

After everything settled down, I went back to the courtyard and found the 9mm round that I had ejected during the failure drill. The round was fine. I down-loaded my magazine and dry-fired my gun. Everything was functional. The cause of the failure to fire was clear—an unseated magazine. I must have bumped the mag release button when I came over the wall. I’m a lefty so the button was completely exposed on the left side of the gun even when holstered.

Smith & Wesson semi-autos are designed not to fire the round in the chamber if the magazine becomes unseated. They are one of few, if not the only make that performs in this manner. Glock, Springfield, Beretta, SIG, all of the other big makes will fire the round in the chamber if the magazine is unseated or even fully removed.

## THE TAKEAWAY

Jose did almost all he could to get his death wish that day. If it weren’t for a weapon malfunction, things would have turned out much different. And for me, it was really no different than if I had actually shot him. I was committed and performed the required action. Fortunately for him, the malfunction occurred. Fortunately for me, the split-second change in threat assessment after the malfunction provided another option. That and the luck of my sergeant showing up in the precise moment of need prevented a much worse outcome. Who says cops don’t have guardian angels?

The moral of the story is this: Train the way you want to react under stress. Your life really could depend on it. You’d rather train for the worst and never need it than train for show and end up dead.

Bradley Nickell is a 22-year veteran detective with the Las Vegas Metropolitan Police Department. 🍀

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# COURTS DETERMINE PBA MEMBER WAS UNLAWFULLY RETALIATED AGAINST AND WRONGFULLY TERMINATED

BY JOHN C. MIDGETTE, NCPBA EXECUTIVE DIRECTOR

**O**n August 19, 2014, the North Carolina Supreme Court denied a petition by the town of Taylortown, N.C., where the town sought to overturn a jury verdict awarded to PBA member and former Taylortown Chief of Police Tim Blakeley. The Supreme Court's rejection of Taylortown's petition and argument ends a seven-year battle whereby Blakeley and PBA fought through the superior court, the North Carolina Court of Appeals and the North Carolina Supreme Court to right the egregious wrong committed by the town of Taylortown and its treatment and termination of Blakeley.

Chief Blakeley's case was tried before a superior court jury for eight days in July 2011, resulting in a verdict in the sum of \$291,000.00 for unlawful wrongful termination in violation of public policy. The jury heard a long running saga whereby Taylortown officials historically subjected their chief of police to highly unusual practices relating to enforcement actions by Taylortown police officers. When Chief Blakeley arrived and began service in Taylortown, he brought with him a personal and professional goal to successfully fight major gang and drug related crime in this small town adjacent to the resort area of Pinehurst, N.C.

Chief Blakeley began initiating substantial improvements to the small and broken police department. He personally engaged in upgrading the police department offices, computers, and vehicles. Despite these efforts, Chief Blakeley was met with more than the usual small town politics.

For example, the town was attempting to use a small ATV Mitsubishi recreational type vehicle on the public highways, which after investigations, was determined to be expressly in violation of



*PBA supported member Tim Blakeley all the way to the North Carolina Supreme Court to achieve a successful resolution of his wrongful termination case.*

North Carolina law. Despite numerous opinions from the attorney general and other law enforcement agencies that the practice was unlawful, the town, speaking through its mayor, Ulysses Barrett, defied the law and took the position that the law did not matter. In fact, the mayor testified under oath at trial after being caught in a taped recorded meeting stating that there are some laws that he was not going to obey and that he would tell any attorney or judge that.

Taylortown was being subjected to an intense narcotics trade until our member attempted to target the drug distributors pursuant to his law enforcement plan of action. Subsequently, strange things began occurring in connection with those

efforts. Blakeley was subjected to communications and pressures from town officials to disclose information from open and ongoing criminal cases, including ongoing drug investigations. He was pressured by town officials to identify an informant in a particular case. While serving on the town board, one of the town commissioners was charged with a drug offense. Following the chief's resistance to such pressures, the town's budget for narcotics enforcement was suddenly withdrawn.

Despite being subjected to numerous attempts of intimidation, our member never capitulated to the threats from his superiors or wavered in upholding his sworn law enforcement duties. Chief Blakeley was terminated in 2007 because of his conduct that was protected by North Carolina public policy. His oath of office, as codified through the North Carolina Law Enforcement Officer Code of Ethics, provided the public policy basis that ultimately enabled Blakeley to win his case.

Several legal determinations made in the case at the appellate level have created substantial precedent that will benefit other law enforcement officers under similar circumstances. In particular, under the doctrine of wrongful discharge, it had been somewhat unclear as to whether or not a plaintiff employee could recover damages for future lost wages and emotional distress as result a of wrongful termination.

The North Carolina Court of Appeals, in an opinion through Judge Robert C. Hunter Jr., said, "...that, in the majority of jurisdictions that recognize the common law tort of wrongful discharge for at-will employees, plaintiffs may recover for lost wages, future lost earnings, and emotional distress... Moreover, we find no reason why these types of

tort damages would not be available to a plaintiff seeking relief for wrongful discharge in violation of public policy.”

This opinion provides an extraordinary precedent to protect law enforcement officers for performing their duties and refusing to succumb to wrongful activity while establishing case law to recover not only lost wages, but also front pay (future lost earnings), and compensation for emotional distress.

A much more complete understanding of this case can be found in the published decision of the North Carolina Court of Appeals, *Timothy Blakeley v. Town of Taylortown*, 756 S.E.2d 878 (2014), which can be found online through the North Carolina Courts website at [www.nccourts.org](http://www.nccourts.org).

Unfortunately, this entire case could have been avoided if Chief Blakeley, as a local law enforcement officer, had been afforded the same whistleblower protection that is currently provided to state law enforcement and correctional officers.

Ironically, the North Carolina Police Chiefs Association made the disappointing decision to join the North Carolina Sheriffs Association in opposing House legislation that would have provided whistleblower protection for local officers. (See House Bill 643, 2013 General Assembly Long Session.) Following false and misleading information provided by these two organizations, the bill was defeated by a vote of 54 to 56.

Beginning with the 2015 Session of the North Carolina General Assembly, PBA will use the *Blakeley* decision in an attempt to challenge similarly poor positions by police management groups when whistleblower protection will again be introduced.

PBA is pleased to see our member finally reach a favorable outcome after this lengthy litigation process. At the end of the day, some justice was finally done, resulting in the vindication of a law enforcement officer.

The case was tried by PBA attorneys J. Michael McGuinness, the McGuinness Law Firm and John Roebuck. 🍀

## ATTORNEY SPOTLIGHT: THE MOORE TAYLOR LAW FIRM



[WWW.MOORETAYLORLAW.COM](http://WWW.MOORETAYLORLAW.COM)

**T**he Moore Taylor Law Firm in West Columbia, S.C. has been a friend to PBA for many years. As far back as 1999, founding senior partner Jake Moore has represented members in central South Carolina in all types of PBA cases. In the years since, several additional attorneys in the firm have followed Mr. Moore’s lead and responded to PBA members in need of legal assistance.

Jake Moore is a graduate of Presbyterian College and the University of South Carolina (USC) School of Law. He has taught at the USC School of Law and lectured at many continuing legal education seminars. He also has served as counsel to the Legislative Audit Council for the South Carolina General Assembly.

According to Moore, “We take PBA cases because we appreciate the hard work and risk our officers go through every day to protect us. Helping them when they need us is how we show them we appreciate what they do every day.”

Ward Bradley is a graduate of Davidson College and the USC School of Law. He is in frequent contact with the PBA legal department as issues arise for South Carolina members. Bradley has responded to numerous officer-involved shooting situations and has also successfully represented PBA members in disciplinary and grievance matters.

When asked about his PBA work, Bradley responded, “In this country, we take our liberties for granted. But these liberties are not assured, and, in some parts of the world, do not even exist. Our officers protect these liberties every day at the street level. Without their loyal service, no constitution or law is enforceable, and no person is safe.”

Nick Riley and Stanley Myers have recently begun representing PBA members. Riley is a graduate of the College of Charleston and the USC School of Law. Myers is a graduate of The Citadel and the David A. Clarke School of Law at the University of the District of Columbia.

PBA appreciates the attorneys of the Moore Taylor Law Firm for their efforts to protect the legal interests of our South Carolina members.

# Update

## VIRGINIA SUPREME COURT RULES IN FAVOR OF LOUDOUN DEPUTIES

BY CHARLIE CARDELL, SSPBA STAFF ATTORNEY

In last year's *Blue Review*, we told you about the lawsuit alleging violations of the Virginia Gap Pay Act<sup>1</sup> that PBA filed against the Loudoun County Sheriff's Office in 2011. In 2013, the judge in that case partially ruled in our members' favor. The PBA authorized an appeal to the Virginia Supreme Court because we strongly felt the judge had misinterpreted the law against our members.

In his argument to the Court, PBA attorney Tim Bosson argued the Circuit Court judge had improperly authorized several illegal employment practices used by the Loudoun Sheriff to avoid paying gap pay to patrol deputies as required by the law. The three employment practices at issue were (1) debiting leave, (2) exchange leave, and (3) forced flexing.

The forced flexing practice required patrol deputies who have accrued extra hours of work to take those hours off within the same work period, to avoid paying overtime. The Court ruled this practice is permissible under the Act.<sup>2</sup>

Under the debiting leave practice, a patrol deputy who takes sick leave within a pay period would have his or her sick leave hours reduced and offset by any overtime hours worked within the pay period. The end result is the sick leave hours would not be debited from the deputy's sick leave bank. The offset sick leave hours were not paid at time and a half.

Under the exchange leave practice, a patrol deputy who works overtime hours during a work period would have the option to voluntarily exchange his overtime hours which accrued in the gap for leave hours to be taken at a later date. Howev-

er, the exchanged leave only accrued hour for hour instead of at time and a half.

Since these employment practices result in patrol deputies not being paid time and a half for all accrued hours of work within the gap, the Court found they violated the Act. The Court reasoned that the offset sick leave hours and the exchanged leave hours were "hours of work actually taken and therefore accrued, within the gap"<sup>3</sup> and must be paid at time and a half.

While this was a great victory for the PBA and its members, the work is not over yet. The Court has remanded the case to the circuit court for a decision on the amount of damages due the patrol deputies.<sup>4</sup> The PBA will continue to be involved in this case until our members are compensated for the lost wages as a result of the sheriff's impermissible policies. ■

<sup>1</sup> The Act requires all employers, except the Commonwealth, with at least 100 law enforcement employees to pay those employees time and a half overtime for all hours of work between the statutory maximum permitted under 29 U.S.C. § 207(k) and the hours for which an employee receives his salary.

<sup>2</sup> *Bailey v. Loudoun County Sheriff's Office*, 2014 Va. LEXIS 119, \*19 (Va. Sept. 12, 2014).

<sup>3</sup> *Id.* at \*14, \*15.

<sup>4</sup> *Id.* at \*28.

# THE ALABAMA PBA RECOGNIZES MEMBER OF THE YEAR

BY BERNA PENDA, PUBLIC RELATIONS COORDINATOR, SSPBA



Gary Cooper (left) receives his ALPBA Member of the Year Award from ALPBA President Donald Scott (right)

The Alabama Police Benevolent Association honored one of its outstanding members, Gary Cooper, at the division Board Meeting, which took place on Saturday, September 27, 2014 in Montgomery.

“This award is about being involved and having the correct leadership skills,” said Jon Riley, Alabama division secretary, who nominated Gary Cooper for the award. “I’ve seen Gary work very hard with a positive attitude over the years.”

Cooper has been a member of the Alabama PBA State Law Enforcement Chapter since 1998. He has been a board member of the State Law Enforcement Chapter for over seven years and has recently completed PBA leadership training.

“I am truly honored, humbled and proud to be part of the Alabama PBA State Law Enforcement Chapter over all these years. Thank you very much. I look forward to serving our members and representing our chapter as best as I can,” Cooper said after accepting the award. 🍀

## THE CULPEPER CHAPTER GETS POLITICAL

BY JASON DEAL, CULPEPER CHAPTER PRESIDENT, VAPBA



**T**he Culpeper Chapter in Virginia has made its presence known in local elections. We have been in operation for almost two years now and have promised to screen every local candidate for local and state office.

Since forming, the Culpeper Chapter has held three screenings for local board of supervisors, town council, mayor, and state delegate positions. Members of the local board have also attended screenings for governor, Lt governor, attorney general and House of Representatives. Of the 15 candidates screened, six endorsements were made, with five winning elections.

We found that some candidates, at first, were shocked by the involvement of local law enforcement in politics. Some stated that they didn’t feel as if law enforcement should get involved in local elections. However, as candidates saw our involvement and group size increase, they started reaching out to us requesting our position on law enforcement topics.

During our last local town election, all three candidates endorsed won the highly contested races. This was a major victory for us, and we feel that our support helped in winning the elections for our candidates.

Since we started the chapter two years ago, we have had to reach out to endorsed candidates on two major topics, one at the state level and one at the local. The Department of Game and Inland Fishery was pushing on an issue in the southern part of the commonwealth where Culpeper Chapter delegates sat as the head of the committee. We were able to make a call to each candidate and express our views on the bill. The delegates were very receptive and specifically remembered our candidate screenings and the members that participated. This helped ease the conversation and allowed both sides to make progress.

The second need from one of our endorsed candidate was at the local town council level. Just after endorsements and an election, we received information that the budget had come up short and a pay and career ladder had been removed from the budget. The local chapter was able to rally support from the public to fund the project. This time, we didn’t have to approach council; the relationship that existed caused candidates to come to us. We were able to sit down with the vice mayor and council members and go over certain items in the budget and come up with \$80,000 in saving that allowed the career ladder to move forward. This was a big step for the chapter. It was the first time elected officials reached out to the chapter to try and fix something that negatively affected our members.

Although it was a rocky start, the Culpeper Chapter has developed a strong relationship with its elected officials at the local level. Even if they don’t agree with us on every matter, we have a strong respect for each other. This is how the political process is supposed to work. It benefits the town, the county and the chapter. We feel like we have a voice at the table. 🍀

## MY PATH TO THE LAND OF SOBRIETY

BY PATRICK CULLINAN, CSRA CHAPTER PRESIDENT (PBAGA)

**H**ere I was – sitting on the edge of a hotel bed, thinking about how I'd do it. I would use a belt, of course. Make a noose, secure the belt and let it go. My life would be over; and that's how I would succeed over my addiction to alcohol.

Yes, my name is Patrick Cullinan and I'm an alcoholic. It's easy to say, but hard to grasp. It took many years to admit to myself – yet here I am, on the edge of a hotel bed contemplating how to end my life... How did I get here?

### EARLY YEARS

What a lovely childhood mine was! My mother was a nurse – a loving and nurturing lady – always made sure I was okay. She raised me as a single mother after my parents divorced when I was six. We didn't have a lot of money but family life was always stable and happy. My father was a deputy sheriff and I would visit him on weekends.

I was also a good student, athletic and very social throughout school. I would hang out with friends and go to school; life was good. I remember having my first drink when I was 13. There's nothing like drinking warm, cheap beer while riding our bikes! I ended up throwing up that day but something in me had awakened. Throughout high school I drank alcohol as often as I could with very few consequences.

In college, I loved the environment! Lots of people my age, bars and parties were right up my alley. After a few years at Georgia Southern University (and a good bit of partying), I transferred to a technical college where I studied emergency medical technology. I became a firefighter and emergency medical technician after graduating with my degree. That's when I got married for the first time and had my first child. Some people may have changed their priorities after this point – not me. I chose to drink more and party. At 23 years old, I was already divorced



with a son. This is when I decided to get into law enforcement. In my mind I was responsible, especially after getting full custody of my son. Two years later, I remarried and had a second son. I was doing wonderful at work and achieving every personal goal I set. Life was good and I sure did celebrate. One may think my priorities had changed – they had not.

Sure, I wasn't spending much time with my children, but I always justified it with working hard to support my family. My second divorce came when I was 29, and this was also when I got promoted to sergeant. Instead of spending quality time with my boys, I chose to throw parties. My eight-year-old son knew how to cook his own meals and wash his own clothes so my life didn't affect his lifestyle – or so I justified. I thought to myself, "What a responsible child I'm raising!"

At this point, I was drinking pretty regularly and hard which led me to making bad financial decisions. I wasn't paying my bills and credit card debt was getting higher and higher. I was spending more money than I was bringing in. On more

than one occasion, I took money from my son's savings to support my drinking. All the while, I was doing great at work and had eventually been promoted to lieutenant in the patrol division. Even though my personal life was falling apart, I had learned how to set that all aside and excel at work.

One day, my son asked me to go outside and play catch with him. I was having a drink so I told him "in a minute!" I had to finish my drink first. My son came back for a second time and I wasn't yet done, so I told him if he comes back again we wouldn't be playing anything. A while later, I looked outside the window and saw my son playing alone.

That's when I realized that alcohol was controlling me; I might have a bit of a problem. I had to cut back on drinking. I set a goal to go without a drink for 30 days. "Easy enough," I thought. I could not do it. Playing golf, hanging out with friends and dinners weren't as fun. I wanted to be a better dad and not drink, but I just couldn't.

That's when I decided to have a chat with my mother about my drinking. She told me to ask for help or I'd ultimately end up losing everything. She was right. As I was having a drink one night, I decided to call the Betty Ford Center for help. That was the only one I had heard of before. They told me about another center closer to me than they were. It took some guts, but I told the sheriff I had to go to treatment, and that's when my first sober 28 days started. I truly believed that after telling the sheriff about my trouble with alcohol, I would end up being washed out of law enforcement when I returned. After all, the stigma in law enforcement is that you don't ask for help.

Boy, was I proven wrong! Everyone at work, from the top down, was very supportive and proud of me. I had gone to treatment, I was participating in a 12-Step program, I was still doing wonderful at

work and I had beat alcoholism. NOT!

Three months after leaving the treatment center, I chose to drink again. "I can't tell anyone now," I thought. I was an alcoholic and I didn't know what to do. I had to leave law enforcement so I wouldn't have to tell everyone that I was a failure. I needed a new job and a change of environment. I needed to work somewhere that I wasn't labeled as an alcoholic.

I had been approached to get into the mortgage business, so I just took the offer. I met a lovely lady at my new job and we eventually started dating. I was still spiraling out of control with my drinking, but no one knew. I couldn't talk about how I was a failure.

I became deeply depressed and began taking various medications for depression, and drinking alcohol heavily on top of that. I had never been suicidal before and always thought that people who committed suicide were weak. But now that gorilla was on my back and I was beginning to have suicidal thoughts on a daily basis. "They're all better off without me," I thought to myself. My sons, my family, my friends would have happier lives without me. My brain was having an attack and I truly believed that suicide was the only way out.

### **BACK TO THE HOTEL ROOM**

In February 2003, I decided to get a hotel room so I could drink comfortably without anyone bothering me; this is something I did from time to time. I was in such a depressed state of mind; I was trying to decide how I would take my own life. I decided it would be death by hanging. I took my belt, tied it around my neck and secured it in the bathroom door. I kicked the chair from underneath me, expecting "the end." I woke up about an hour later on the bathroom floor with a big knot on my forehead. The belt had freed itself from the top of the door. I'd fallen down, hit my head and passed

out. I told everyone I hit my head on my garage floor after falling off a ladder. No one knew about my failure to commit suicide or my failure to stay sober.

In July 2003, I decided to leave town and go to Savannah since I was already thinking about moving to a town where no one knew me. I told my girlfriend she was too good to be with a guy like me and made the move. I was staying in an extended stay hotel in Savannah. By this time, my mother had my oldest son and my youngest son was with his mother.



I remember it was July 21st and I drank heavily all day. The next day I woke up with a big hangover and looked in the mirror. I said to myself, "Patrick, you need to get sober and honest with yourself." I knew that I couldn't get sober for anyone else; I had to do it for myself.

Just like that, I decided to go to detox again. As I was driving to the treatment center, I stopped at a neighborhood restaurant so I could have one last drink. I observed the rest of the customers as I took my seat at the bar for happy hour. I saw how happy they were as they sipped on their piña colodas. I ordered one as well, took a sip and waited for the "happy

feeling" to sink in. It never did...

After my stint in detox, I was still not ready for the real world. I decided to move into a halfway house in order to learn how to live sober. For the first time, I was willing to go to any length for my sobriety. I went to Helen, Ga. to live and to work as an assistant to a well-known potter who was a recovering alcoholic. My tasks included sweeping the floors, digging clay out of creek beds and helping around the shop. Just simple tasks to teach me how to live again; most importantly, how to live sober again.

After a while I got promoted to driving the tractor, and I was starting to get used to the ways of a sober life. I still felt a bit empty, however. One day, a friend asked me if I prayed. This was a tough question to answer, as I felt I had made God angry after making the wrong decisions time after time. My friend told me if I couldn't pray to my God, I could pray to his. He told me to leave my keys under my bed to remind me to get on my knees.

After a while, I started praying to my God again to ask Him to help keep me sober each morning and thank Him for keeping me sober each night. I made a personal commitment to stay at the halfway house for six months, which I did. During this time, I restored my relationship with God, my family and with the wonderful woman that I was dating.

In 2004, I put in an application to Richmond County Sheriff's Office to see if I could get a job. I had to take a polygraph test, which asked about drinking. I was honest and talked about the fact that I was a recovering alcoholic.

I got the job and went back to patrol where my career had begun. I put my pride and ego to the side. It didn't matter to me that I was once running my own shift. As long as I was in law enforcement, I was happy. That same year, I married that wonderful woman and we blended our two families into one with four children. My entire family was the

best support system that anyone could ask for. They participated in my recovery on a regular basis and were always my biggest fans.

## MY LIFE NOW

I know I've come a long way. By the grace of God, I have not found it necessary to take a drink of alcohol, one day at a time, since July 22, 2003. My priorities today are God, family and work. Since returning to law enforcement, I have served in the patrol division, traffic division, criminal investigations division and the special operations division where I currently serve as a K-9 handler. Nothing gives me more joy than being able to

assist others and to help people realize they can get help as well. There is a solution, if you are willing to accept it, and be honest with yourself and others. There is always an out.

Alcohol abuse and dependency has been an ongoing problem amongst the law enforcement community. Because drinking has been an acceptable part of the police culture and has been a way for officers to cope with the stress of their work, issues with alcohol frequently go undetected. Repeated exposure to trauma, suicide, domestic violence, and mental health takes its toll on even the most highly resilient officer.

Repeated exposure to these types of stress often produces frustration, depression, anger, and other emotions, which officers are taught to suppress. Alcohol, because it is legal and acceptable, is frequently used as a means to escape or blow-off steam. It's always around in social settings and officer hangouts.

A part of my job now is to share my story to show people that they can get sober too. There are programs, help lines and meetings anyone can go to in order to start sober living. It's never too late to begin the rest of your life. 🍀

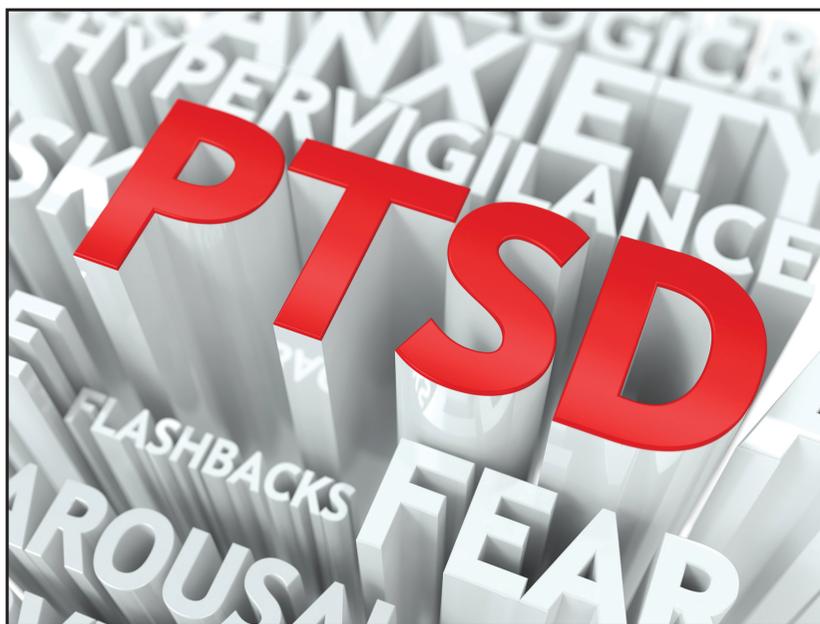
## POST TRAUMATIC STRESS DISORDER CAN BE DEADLY WHAT CAN WE DO ABOUT IT?

BY TOMMY SIMPSON, DIRECTOR OF ORGANIZATIONAL SERVICES, WEST REGION

**D**epression and Post Traumatic Stress Syndrome, when left untreated, can often lead to the destruction of an individual's career and relationships and to even one's self destruction. Suicide has pretty much become a greater risk to those in the law enforcement profession than being killed by the bad guys.

Here in Mississippi we have experienced that sad reality in the recent past. While the law enforcement profession has always been a high-stress profession, causing depression and PTSD and resulting in divorce and suicide rates, there has been a very clear and significant increase in recent years. Many attribute the more recent increase of this problem within the law enforcement community to the fact that many law enforcement officers are also combat military veterans.

While it is not realistic to believe all tragedies and stress in a person's life can be prevented, it is possible and essential to realize that these things are the root



causes of depression and PTSD. Whenever stressful situations are encountered, there are ways to help reduce its adverse effects on the body; this is something we all need to learn.

Whenever someone has reached the point of being suicidal, there are always statements or actions by that person signaling the upcoming tragedy. If we learn to recognize these flags and the appropriate action to take, we can likely aid in preventing what will otherwise be another suicide.

This is what the Police Benevolent Foundation's program *Behind The Badge* is all about. It is a FREE basic training seminar to inform officers and their family members of the dangers of stress and what adverse effects it has on our bodies, mentally and physically. Instruction is provided on ways to help you reduce the effects of stress on your body. Much can be learned in recognizing the flags of a pending suicide and what to do when such flags are observed. *Behind the Badge* provides eye-opening information,

which may enable you to better understand and deal with stress, as well as possibly help save the life of a fellow officer, family member or friend. It's well worth spending eight hours at the seminar and receiving eight hours of credit with Standards and Training for attendance.

*Behind The Badge* training seminars will take place in Mississippi on November 6, 2014, at RCTA in Meridian and November 7, 2014 at the Donald Snyder Center in Biloxi. 🍀



## PBA LEGAL BENEFITS DESIGNED TO PROMOTE PROFESSIONALISM

BY SEAN MCGOWAN, VIRGINIA PBA EXECUTIVE DIRECTOR

**W**e have heard it many times: law enforcement professionals are held to a higher standard. This standard extends from our professional lives into every aspect of our personal lives. Many believe that we did not choose this profession; rather, the profession chose us.

We take an oath; we make a promise to uphold the laws of the land and the US Constitution. This oath is from our very core and is the foundation on which every successful career in law enforcement is built. Remaining true to this promise is how we gain and maintain credibility and success.

These values also lie at the core of PBA philosophy on representation of our members. During a meeting with a newly appointed deputy to the attorney general, I was asked to describe the PBA. I discussed our benefits and the goals of the organization, and I described our requirements for member representation during grievance and discipline proceedings. The deputy looked at me and said “So, you’re the purists.” After considering the statement, I responded that I had never considered the term and I did agree with the characterization.

The PBA philosophy is in-line with the high standards expected of our members by the citizens they are sworn to protect. Coverage for our members is designed to be for on duty law enforcement activities. Intentional violations of policy and law are not tolerated by the PBA, and there is no coverage for such activities. This is a simple approach that clashes with the views of some other labor groups who will spend their members’ money on the representation of their members who knowingly and willingly disregard policy or break the law. Blindly supporting a member for unprofessional or illegal behavior diminishes

the entire organization, ultimately damaging the members they claim to support.

The PBA holds a high level of respect partly because of our representation policies. When administrations or politicians know the PBA is involved in a case, they take notice; if the politician or administration is unfamiliar with the PBA, the involvement will educate them.

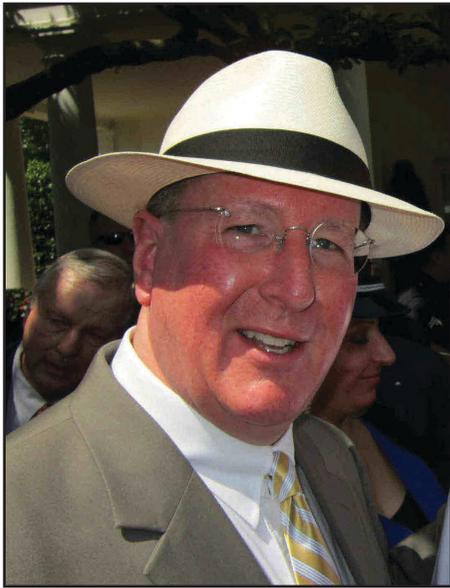
The PBA is self-funded; we do not conduct any solicitation by phone or mail, nobody can claim that the PBA called during their dinner asking for donations. Because the PBA is entrusted with funds directly from our members, great consideration is necessary for any distribution of those funds. The PBA is streamlined, financially sound, and ready to provide our promised benefits to our members.

When representation for a member is denied for off-duty activities or intentional violations of policy or law, the PBA is unable to divulge the details of the case other than to the member involved. This position does give other organizations or individuals the opportunity to spin the events and misinterpret the results in an effort to place the PBA in a bad light. The PBA will not violate member confidentiality to dispute rumors.

PBA member benefits are clearly stated and are the best protection law enforcement professionals have available to them. Service to our members, providing our promised benefits and increasing professionalism in the law enforcement profession are the goals of the organization. Be critical of anyone you hear asserting that the PBA has not provided the promised benefits; they undoubtedly do not have all of the information necessary to make such a statement. ■

# LAW ENFORCEMENT OFFICER LEGAL DEFENSE: HOW TO RESPOND TO AND DEFEND A CRIMINAL INVESTIGATION

J. MICHAEL MCGUINNESS, THE MCGUINNESS LAW FIRM



**T**imes are rapidly changing resulting in new and growing legal and other risks to law enforcement officers. The risks of officers being criminally investigated and indicted have substantially increased.

New technology, facebook, an increasingly intense news media focus on police officers, politicized investigations of officers, incomplete investigations of officers, incompetent investigations of officers, overt bias against officers, and many other related problems have risen to catastrophic levels. Legal dangers for police officers have never been higher. Multiple adversaries are working together in team efforts to strike police officers with multiple charges in different forums.

Every law enforcement officer is subject to substantial risks of being indicted for merely doing his or her job. Incomplete evidence is being presented to grand juries seeking the indictment of officers. Officers are now being rushed to indictment for homicide offenses prior to the completion of autopsies, prior to the completion of eyewitness interviews, and prior to the completion of evidence necessary for assessment of use of force statutes and governing case law.

How does a good police officer survive in this jungle of legal risks from criminal investigations?

The following are suggestions to promote your legal survival as a law enforcement officer in situations which may raise risks of criminal charges. These points are a checklist of ideas for information, but are not a substitute for specific legal advice and counsel when issues arise. Specific legal advice should be obtained at the earliest hint of possible trouble.

Being ready to defend a criminal inquiry requires consistent effort including awareness, education, judgment, objectivity and hard work to survive as an officer.

Any use of force may subject you to a criminal investigation for various assaults or homicides. Virtually any act or omission can result in a criminal charge of failing to properly discharge duties of office, malfeasance, obstruction of justice or other offenses. Misuse of equipment or resources may result in various property crimes. Obstruction of justice charges against officers are being brought with much greater frequency. Potential criminal charges are lurking everywhere for officers.

There are numerous potential legal adversaries who may investigate, charge, prosecute, sue or otherwise challenge an officer: anti-officer interest groups, disgruntled arrestees, the State Bureau of Investigation, the Federal Bureau of Investigation, the United States Department of Justice and the Law Enforcement Prosecutions section, the Special Prosecutions Units of the State Attorney General's Office, the United States Attorney, federal grand jury, a state grand jury, the local District Attorney, the Criminal Justice Education & Training Standards Commission, politicians, the news media, Internal Affairs, and others. Officers often have to deal with several of these entities arising from a single allegation.

When you learn that you may be the subject of a criminal investigation, you should immediately obtain legal counsel before you do or say anything.

After a complaint or critical incident, immediately prepare to defend yourself. Something is likely coming: a civil lawsuit, a Training & Standards complaint, a criminal charge, and/or a media attack.

Stay away from the news media, and do not speak to them if they inquire about your conduct or potential involvement in a criminal investigation. Respectfully refer them to your counsel. Do not give any press release or statement.

Have at least two family members designated for contact in the event of a critical incident or emergency. Know who you can depend upon to deal with posting bond if you are criminally charged.

Never attempt to self-lawyer or self-medicate. Find and use an experienced specialist for your legal and medical needs. Are you sufficiently objective and knowledgeable about the layers of complex state and federal law that apply in most alleged police misconduct disputes? Should you be advising yourself? Do you know about all of the recent state and federal cases that apply? Are you going to take advice from non-lawyers or others not specifically trained in law enforcement liability and criminal law? When your chief says something like, "everything is going to be okay," should you rely on that and risk indictment or have a professional evaluation conducted?

In selecting counsel to help with a criminal investigation, you should obtain experienced counsel who are skilled at criminal defense advocacy, Garrity issues that interrelate to your job as an officer, and police liability legal issues generally.

Do not allow co-workers to influence your objective decision making in a personnel, conduct or liability dispute.

Colleagues and chiefs are not qualified legal or personnel advisors. Do not unnecessarily put co-workers in the position of being a witness to comments by you relating to an allegation or incident. Personnel disputes are confidential. Do not disclose your confidential information or it may waive some of your legal rights. Be careful of who you listen to. Do not talk about a complaint against you with non-privileged persons, or it may haunt you forever.

If a criminal investigation starts, you cannot and must not contact witnesses; your counsel must guide that process with or without a private investigator. Your contact with witnesses could backfire.

Be very careful when making any changes to documents. Make sure that such document changes are appropriate, fully justified and documented.

## CRITICAL INCIDENTS & SHOOTINGS

When a death results from police operations, you must be prepared for a different kind of the most intense and protracted wrath. Deaths from police use of force often present complex investigative and advocacy issues.

If contacted by a criminal investigator about any of your conduct, inquire generally about the nature of the inquiry. If you were in any way involved in police actions or omissions, seek immediate legal advice before making any statement. Be careful. Do not be duped into believing that “you are only a witness” by a criminal investigator. If you had any role at all in any encounter with the matter under inquiry, you can immediately or later be made a defendant by a state or federal prosecutor or by a lawyer representing any claimed “victim.” Criminal investigators are supposed to complete their investigations before a determination by a prosecutor identifying the targets and defendants, as opposed to who are only witnesses. If they are so sure you are only a witness, then they should provide you an immunity agreement making their

promise enforceable. Do not allow yourself to be pressured, influenced or tricked into an immediate waiver of rights.

State Bureau of Investigation and other criminal investigations into officer involved shootings and accidents often begin within minutes of the incident; you should be ready to immediately obtain counsel and defend your interests prior to making statements to criminal investigators. Immediately contact your attorney



by phone and/or get counsel to the scene and to you to immediately begin investigating and evaluating. Do not delay. Do not give a statement to a criminal investigator without counsel present with you. Any criminal interview should occur later after it is determined that you are all right, are properly rested, are not under undue stress from the encounter, and have conferred with legal counsel.

Make sure that any interview that you give in a criminal investigation is tape recorded so that you are protected.

Do not make statements about a complaint against you to colleagues unless as a result of a Garrity order in the official investigation. If you blab your confidential information, it may feed rumors that may haunt you. Confine your discussions about your criminal investigation or personnel dispute to your counsel as those communications are legally privileged.

Never ever undergo an SBI or other criminal investigative interview without your counsel being present for the entire interview. Your attorney should always record the interview with at least two tape

recorders. You should never undergo the interview until you and your counsel are fully ready. Do not rush and do not allow the interrogator to rush the interview schedule.

A federal criminal investigation may soon follow the state investigation. There are federal statutes that govern statements of witnesses or suspects, and there are criminal penalties for misrepresentations.

Know the principles of Garrity. You have to cooperate with your employer in an investigation if a supervisor orders you to cooperate. Make sure that you invoke your Garrity rights by timely asserting those rights before you make a statement to your employer following an order or request that you provide a statement.

Following a critical incident or a complaint involving you, await an order by a supervisor before making a responsive statement to your employer. Do not volunteer statements to investigators employed by your employer or you will likely lose Garrity protection. Simply await an order for you to provide a statement.

Insert a protective Garrity rights invocation on each use of force report that you prepare, otherwise, the use of force report may be used against you in a criminal investigation and prosecution.

When preparing any written statements, always prepare a draft and analyze it before preparing the final statement. Review relevant documents before concluding your statement. Make sure that your final submitted statement is complete, true and accurate. Seek counsel if you have any questions.

Make sure that all verbal and written statements that you provide are complete, accurate and true. Provide a supplement or modification when necessary to ensure accuracy.

Be truthful at all times. If you realize

that you have made any significant error in any communications, initiate timely corrective action and make sure that your corrective actions are documented.

Be prepared to tape record any statement that warrants recording, but you must be compliant with state and federal law and agency policy. Seek legal advice regarding recording evidence.

Seek legal advice at the earliest possible opportunity upon notice of any impending criminal investigation, personnel or other dispute with legal implications.

Do not hesitate to seek professional consultation or counseling to help with legal, personnel, emotional, medical, medication, marital, financial or other problems. Seek help. Find a qualified professional, listen and cooperate.

Keep copies of all documents that relate to your employment, certification and

training. Keep all personnel and other evaluations.

Keep a secure file with copies of all of your personnel, law enforcement certification, education, medical and medication records.

Develop a positive professional relationship with all judges in your District. Show complete respect to all judges at all times, in and out of the courtroom. A judicial decision against one of your cases does not warrant any lack of respect. Never publicly criticize a judicial decision in any case involving you or any other member of your agency.

Develop a positive professional working relationship with the District Attorney and Assistant District Attorneys in your jurisdiction.

Do not ever use agency equipment or property for personal use. Never use your

agency email for any personal communications.

Never allow anyone to interfere with your right to legal counsel. However, the law in most jurisdictions does not allow officers to have legal counsel present during internal affairs interviews. You should seek counsel before such internal affairs interviews in order to best prepare. Seek counsel immediately at the first hint of possible trouble.

## CONCLUSION

Officer legal survival has become much more difficult in recent years. Numerous adversaries are ready to harass officers with false or frivolous accusations. Criminal investigations of officers are very common. Being prepared to properly respond to a criminal investigation will likely bring it to proper closure sooner and with the desired result. 🍀

## ATTORNEY SPOTLIGHT: HAYDEN WILLIS



[WWW.HAYDENWILLISLAW.COM](http://WWW.HAYDENWILLISLAW.COM)

**W**hile only serving as a PBA referral attorney since 2012, attorney Hayden Willis has quickly become a reliable resource for members in south Georgia. He has handled criminal, disciplinary and certification matters with enthusiasm and professionalism, and he has obtained some significant victories for PBA members.

Willis practices criminal defense and family law in his hometown of Moultrie, Ga. He is a member of the State Bar of Georgia, the Louisiana State Bar, and the Georgia Association of Criminal Defense Lawyers.

Receiving his Juris Doctor from the LSU Paul M. Hebert Law Center, he was on the Student Bar Association's Executive Board, staff writer for the law student newspaper, *The Civilian*, and Vice President of the LSU Federalist Society.

"My grandfather was a Game Warden in South Georgia, so I was brought up to respect law enforcement," Willis said. "I love hearing stories about him and the way he went about doing his job with integrity and common sense. Representing law enforcement officers presents a unique challenge. We ask these public servants to make split second decisions that are often scrutinized later on in a much calmer environment than what they stepped into that particular day. Representing police officers gives me the opportunity to appreciate those folks who keep the rest of us safe."

# THE MORE THINGS CHANGE, THE MORE THEY REMAIN THE SAME

BY JEFF FLUCK, DIRECTOR OF GOVERNMENTAL AFFAIRS

The law enforcement profession has changed dramatically over the past forty years.

The late nights partnered up in a patrol car with a two-channel two-way radio were long, and for the most part, boring. Only occasionally would a break-in or disturbance call interrupt. If you were one of the lucky ones, you were able to sign out one of the few portable radios available. This would allow you to get out of the car and catch a coffee and donut without missing the calls (if the "Sarge" didn't catch you.) No high-tech mobile data terminals, no digital video and GPS, not even a cell phone!

It's funny to reflect back on the "old timers" that informed me about the first two-way radios in patrol calls and the end of the call box system. Where did the time go? The time will come when today's officers will look back and laugh about the old-timers of today. Law enforcement sure has advanced in this country.

I can remember getting called into the

captain's office because a citizen had complained I mistreated them. I wasn't given much information, but ordered to "spill my guts" or face disciplinary action, to include suspension and possibly termination. Then I was informed "they" would review and make a determination as to what was to happen to me.

The mysterious "they" usually meant the chief. Of course, the discipline would have not any direct correlation to the facts. It had more to do with the parties involved and, more specifically, the politics of the parties involved. In the old days, some officers who committed flagrant violations were dealt with lightly and many times not at all. But on more occasions than I care to remember, officers received harsh discipline, were suspended, or even fired for minor violations because the complaining party had a lot of political pull, or put on the pressure.

I sure am glad those days are gone. No more arbitrary employment actions based on politics. Salaries and benefits that provide for today's officers to buy a home, raise a family and provide a college

education for their children are prevalent. I am pleased to see the cooperation between officers, their command and the elected officials providing the best training, equipment and working conditions so that the officers can best serve the community.

I sure am glad things have improved, aren't you? What? You say they haven't changed where you work? You mean to tell me your working conditions sound the same as they did in the last century? Well, don't you think it is time to do something about it? This is what the Southern States Police Benevolent Association's political activity is all about. What have you done to engage with your state division's political activity? How about your local chapter political activity? Don't hope that "they" will make things right.

Take an active part, get engaged, and make a difference in your present situation and for the future officers to come. Remember, one day YOU will be the old timer. 🍷

**STOP THE TEXTS STOP THE WRECKS**

**THE AVERAGE TEXT TAKES YOUR EYES OFF THE ROAD FOR NEARLY FIVE SECONDS. AT HIGHWAY SPEEDS, THAT'S ENOUGH TIME TO TRAVEL THE LENGTH OF A FOOTBALL FIELD.**

(2009, VTTD)

1 2 3 4 5

**STOP THE TEXTS**

**STOP THE WRECKS**

**1/3**  
More than a third of young adults say they have been involved in a near-crash because of their own or someone else's distracted driving.  
(2010, Pew Research Center)

**82%**  
OF DRIVERS 16 TO 24 SAID THEY HAVE TEXTED WHILE DRIVING.  
(AAD COUNCIL, 2011)

**85%**  
OF YOUNG ADULTS WHO TEXT WHILE DRIVING AGREE THAT TEXTING IS A PROBLEM.  
(AAD COUNCIL, 2011)

**77%**  
OF YOUNG ADULT DRIVERS ARE SOMEWHAT TO VERY CONFIDENT THAT THEY CAN SAFELY TEXT WHILE DRIVING.  
(AAD COUNCIL, 2011)

**A TEXTING DRIVER IS 23 TIMES MORE LIKELY TO GET INTO A CRASH THAN A NON-TEXTING DRIVER.**  
(2009, VTTD)

**STOP THE TEXTS. STOP THE WRECKS.**

**Ad Council**

**NHTSA**  
DEPARTMENT OF TRANSPORTATION

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## FREE SPEECH ISN'T REALLY FREE!

WHEN POSTING ON SOCIAL MEDIA, PROCEED WITH CAUTION

BY DALE PREISER, SSPBA STAFF ATTORNEY

Comments made by law enforcement officers on social media such as Facebook just may turn out to be “firing words.” Occasionally, members call PBA fearing disciplinary action for critical comments they recently made about the department, co-workers, or elected leaders. The explanation of facts is usually followed by, “The First Amendment protects me, right?” Sadly, the answer is most often a resounding “No.” The next question is usually, “PBA will help me if I am disciplined, right?” Most often, the answer is “no.” Usually, the act of making public comments about the workplace is a personal choice and non-law enforcement related.

Unless there is a specific state law addressing speech within the workplace, constitutional protection is determined

by a test flowing from two seminal U.S. Supreme Court Cases. Winning a First Amendment retaliation claim requires:

- The speech to be a matter of public concern.
- There is no clear test. Speech related to reporting racial discrimination, corruption and matters of political, social or other community safety/health concern is likely to pass.
- The Supreme Court has held that statements pursuant to official job duties are not protected. Also, if the speech could be classified as an expression of a personal grievance, it will not pass muster.
- The employee’s interest in speaking out is greater than the public employer’s interest in promoting internal efficiency.

Common factors include whether the speech impairs discipline or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and convince are necessary, or interferes with the normal operations of the public employer. The extent of the government’s burden to show disruption depends on the nature of the employee’s expression. The more important the First Amendment interest, the more disruption the government has to show.

Below are some examples regarding social media postings that PBA members have encountered.

- Member posts a Facebook comment about the president’s upcoming visit to their state following a natural disaster and how such a visit will

only contribute to existing traffic chaos. Not too bad, would likely be protected. The kicker was commenting that it may just be better if Air Force One crashed. It is likely that the second test would tip the scale upholding discipline taken by the employer as the posting could have caused racial issues within the department or with the citizens against the department. How many chiefs would love a knock on the door by Secret Service?

- Officer posted on Facebook, “major problem [with department] is not crime, but hopelessness, self-serving leadership,” etc. Not protected.
- Member given option to resign for Facebook post that he knows certain local high school football players had charges dismissed so they could play. Possibly protected.

Other non-speech Facebook problems may arise as well. Members are advised to know their department’s social media policy and to be aware that, even though they may believe that their comments are only visible to their friends, that is often not the case. Once these types of postings are brought to the attention of the department, the officer may find himself or herself charged with a specific policy

violation or with general violations such as “conduct unbecoming” or “reflecting poorly on the department.” Below are some relevant examples.

- SRO was accused of making inappropriate comments to an eighteen-year-old student on Facebook. An investigation led to the search of his cell phone and texts. Member was terminated.
- A police chief was terminated for videos posted on Facebook and YouTube. Videos were of general horseplay of several officers of the department. This horseplay apparently involved the inclusion of a mentally challenged citizen of the community.
- Officer posted a picture on Facebook of a car accident that was caused by a drunk driver and made a comment “Do not drink and drive.” The Department had a policy against Facebook posting. An officer in his department took a picture of the Facebook post and shared it with the chief. The member was terminated for the policy violation.
- Member faced with termination when the superintendent viewed his Facebook pictures. One, from high school, showed him with gang

members.

- Member given choice to resign or be terminated when her department found out two of her friends on Facebook have criminal records.

These are simply balancing tests, and there is no way to predict outcomes in advance. The current scale of justice weighs greatly in favor of public employers. Any member considering making a public statement about the workplace should refrain from doing so without first consulting with a local attorney. Any member posting on social media at all should proceed with caution and consider the possible ramifications to his or her employment. In any event, contact PBA legal for a coverage review if an investigation is commenced over a public comment you have made on social media. Bear in mind that social media postings are rarely part of an officer’s law enforcement duties and therefore would rarely fall within PBA coverage.

As a citizen of the United States, individuals have the right to express themselves. However, it is important to remember the following: “[A policeman ] may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. 🗿

## FAYETTEVILLE, NORTH CAROLINA MEMBER PREVAILS IN DEFAMATION CASE

BY JOHN C. MIDGETTE, NCPBA EXECUTIVE DIRECTOR

**O**ur members are often plagued with false complaints. There are usually numerous legal and practical obstacles to being able to litigate against a false accuser. Occasionally, we have an opportunity to appropriately challenge a false accuser in court. PBA brought a Superior Court challenge in *Eddie Ketchum v. Jermor Simmons and Troy Williams* in Fayetteville, NC. In essence, Officer Ketchum was falsely accused of making a racial slur to a suspect during a traffic stop. The car video revealed that there was absolutely no such racial slur used.

On May 21, 2012, Officer Ketchum, a ten year veteran of the Fayetteville Police Department, was on patrol and stopped a vehicle operated by Jermor Simmons. Officer Ketchum was parked checking speed and traffic violations in the residential neighborhood. Officer Ketchum observed a vehicle being driven on Alamance Street. The operator, Mr. Simmons, was not wearing his seat belt.

Three citations were issued to Simmons for no seat belt, improper registration, and having a child not properly secured in the vehicle. Simmons was released and departed. During his communications

with Simmons, Officer Ketchum did not use any words that were or could be considered to be any type of racial epithet or slur. The car video captured the stop and all communications.

On May 23, 2012, a complaint was prepared, communicated and published by Simmons to the Fayetteville Interim City Manager and City Attorney alleging that Officer Ketchum used an inflammatory racial slur.

On May 23, 2012, Troy Williams prepared, published and communicated correspondence sent by email

communications to the Mayor and City Council of the City of Fayetteville and the Fayetteville Interim City Manager. Williams' email communication was denominated with the subject of a "very serious complaint." Williams attached a copy of the May 23, 2012, complaint prepared by Simmons and publicly communicated and published that complaint to the Mayor, Interim City Manager and City Council of the City of Fayetteville. Prior to publishing the complaint against Officer Ketchum, Williams failed to conduct an investigation to determine if Simmons' complaint was true. Simmons later admitted that the complaint was false.

On May 24, 2012, Attorney Allen Rogers communicated a letter to the Fayetteville City Attorney and advised that he was unaware of the complaint that had been sent from his office. Rogers had been informed that Simmons had been in contact with Williams prior to sending the complaint.

The complaint by Simmons was leaked or otherwise communicated to representatives of the news media. Thereafter, the false allegations against Officer Ketchum were republished in the media.

What makes the involvement of Rogers and especially Williams as disturbing is what the two men had been up to in the preceding months.

Rogers, a criminal defense lawyer and Williams, a so-called community activist, radio talk show host and guest columnist and editorialist for the local newspaper, had for months been trying to convince the Fayetteville City Council and others that the city's police were actively engaged in racial profiling of African-Americans. Tim White, editor of the Fayetteville Observer and a colleague of Williams, admitted that the entire racial profiling or "driving while black" allegations became public following a conversation between White and Williams. The efforts worked and stirred up innuendo and speculation – but not a single case of proven racial profiling.

Despite having no significant evidence to support the allegation, then - Mayor Tony Chavonne and a majority of the city council voted to support 1) an unlawful

moratorium on police consent searches, 2) a U.S. Department of Justice Investigation, 3) an effort to unlawfully release officer personnel files and 4) the hiring of the National Organization of Black Law Enforcement Executives (NOBLE) to investigate the department.

The first quarter of 2013 proved to be fatal to Mr. Williams' efforts. Following weeks of failed efforts by PBA to reason with the former mayor, a Superior Court issued two separate orders, including a restraining order supporting a PBA lawsuit enjoining the city's unlawful consent search moratorium.

The U.S. Department of Justice declined to file any civil action alleging racial profiling, indicating that there was not even enough evidence to warrant an investigation.

By early May 2013, it was evident that the city's efforts to seek legislation to publicly release police officer personnel files was not going to pass due to PBA's successful lobbying of PBA endorsed state legislators to block the proposed legislation.

NOBLE publicly released its report stating that no evidence was found of any racial profiling by Fayetteville police. With all efforts claiming racial profiling proven to be untrue, it is ironic that the main instigator of those false claims just a few weeks later became the facilitator and publicizer of the false complaint against Officer Ketchum.

Officer Ketchum was completely exonerated of the manufactured, fabricated and false complaint against him. Simmons' false complaint was leaked or communicated to the news media, and substantial adverse publicity against Officer Ketchum immediately erupted.

The Fayetteville City Council viewed the videotape, released it publicly and it was concluded that the complaint was baseless. The official investigation also found the complaint to be baseless.

Prior to trial, a mediation was held. Not asking for monetary damages or any other award, Officer Ketchum simply wanted an apology from Mr. Williams.

A written letter of apology was obtained from Mr. Simmons very early on and finally one came from Mr. Williams. The case was settled.

Some justice was done. Officer Ketchum has since been promoted.

The likelihood of actually collecting monetary damages was nil. Without insurance coverage, collecting money is usually virtually impossible. Defamation claims have difficult to prove elements. First Amendment related defenses are often difficult to overcome because, among other reasons, police officers are public officials. The burden of proof is very high.

In the end, it was not city council or other city officials that stood up to Mr. Williams and his false agenda of division and sensationalism. Not even the Cumberland County District Attorney chose to act. It was thanks to the professional and courageous stand taken by Sgt. Eddie Ketchum that sets a foundation for other officers faced with false claims designed to divide citizens and end law enforcement careers.

PBA staff and PBA Attorney Mike McGuinness represented Officer Ketchum.

*Editor's Note: Defamation lawsuits are typically outside the scope of PBA representation because of the high standards that a police officer must meet to prove his case and because the defamatory statements and resulting damages are usually difficult to prove as well. This case, however, coincided with PBA's efforts to challenge the city of Fayetteville's actions to unlawfully limit the authority of its police officers. In addition, there was clear videotaped evidence proving that the harmful allegation against Officer Ketchum was untrue.* 🍀

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INFORMATION?  
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AND UPDATE YOUR  
INFORMATION**

# TENNESSEE PBA HONORS ANDREW JACKSON CHAPTER PRESIDENT

BY JENNA LYNN CAUSEY, PUBLIC RELATIONS COORDINATOR

**O**n September 13, 2014, James Lanier, President of the Andrew Jackson Chapter of the Tennessee PBA, was presented with a plaque to recognize the efforts he put forth at the Race for the Fallen 5K Glow Run that was held in Lebanon, Tenn. on June 14, 2014. With Lanier's help soliciting sponsorships and recruiting runners and volunteers, the race was a huge success for the Police Benevolent Foundation.

"I could not have done it without the support of Sheriff Robert Bryan, Chief Larry Bowman, and my board members. It really was a team effort. I am looking forward to working on the race again in 2015," said Lanier.

When the team arrived on race day, James had everything in place and ready to go. He had successfully rallied a good number of the local PBA chapter members as volunteers. The strong law enforcement presence really helped capture the heart behind the race. There were also many members of the community that came out to support the runners and the cause. For this, the first Tennessee race put on by the PBF, there were over 500 runners.

Next year, the Tennessee race will be held in Mt. Juliet on Saturday, June 13th. James hopes that by moving the race to this

more populated area, the race will be an even bigger success in 2015.

James Lanier was recently elected as vice president for the Tennessee PBA. He has been a PBA member since March 2008 and has been the president of the Andrew Jackson Chapter of the Tennessee PBA since November 2011. He has been in law enforcement for 24 years and is currently serving at the Wilson County Sheriff's Office as a sergeant patrol supervisor. Lanier also served our country as a Marine for 28 years. James currently works as the director of the Citizen Sheriff's Academy and as a hostage negotiator instructor, and he is launching a Police Explorer program.

"James deserves this special recognition because of his hard work and dedication to the Police Benevolent Association and Police Benevolent Foundation. He is an extremely diligent worker with a can-do attitude. He really helped make the Tennessee race a great success," said Tim Reichert, director of communication and public affairs for the Southern States PBA.

Look for more information about our races and the upcoming 2015 race season at [www.raceforthefallen.com](http://www.raceforthefallen.com). 



*James Lanier (left) being presented with a plaque for outstanding achievement by TNPBA division president Johnny Bohanan (right). James was recognized for all of his hard work in bringing the PBF's Race for the Fallen Glow Run to Tennessee.*

## LOCAL CHAPTER INVOLVEMENT - HOW IT CAN WORK

BY TOM SLYMON, NORTH MECKLENBURG CHAPTER PRESIDENT (NCPBA)

In 2006, we formed the North Mecklenburg Chapter of the NCPBA to serve officers at the Huntersville, Davidson, and Cornelius Police Departments. Some officers were affiliated with a group based out of Charlotte that focused on issues in that jurisdiction, and some had no affiliation. We decided forming our own group with the PBA would be better because the benefits were more substantial and we would be able to have our own board to address issues important to our smaller agencies on the north end of Mecklenburg County.

Within a few weeks, a steering committee was formed and, through an election by members, a board was selected. Then we decided what issues were important to our members with meetings and daily interaction. Identifying what members wanted was easy because our board came from our pool of coworkers. Shortly after electing a board, we identified our goals, conducted a candidate screening, and endorsed candidates that were sympathetic to issues important to us. This led to those positive changes. We got to know them and they got to know us. During each election cycle, the screenings became more commonplace and expected by candidates seeking election.

This wasn't easy in the beginning because we weren't immediately embraced by some employees and administrators in these towns. The process of them getting to know us and us getting to know them eventually ironed out those concerns.

We presented issues that were common sense issues, and, for the most part, it was an educational process for all of us. The concerns administrators have are seldom known to the average rank and file employee, and the concerns of the rank and file employee are rarely known to administrators at the top without a group like us. Forming a chapter helped to close that gap. We didn't agree on every issue, but in some cases, the goals were the same.



This relationship developed into including the chapter in some of the processes that go on in town government where most rank and file employees are often considered outsiders. Pretty soon, we were invited to budget workshops to hear the dialog between elected officials and department heads. Our input was valued and respected, and our invitation to attend was flattering. We were able to witness what level of support we had from each elected official and share that with our members.

When the time came to fill the vacant police chief position in Huntersville, we were included in that process too. The Town of Huntersville administrators conducted their search in a way most employees only dream of by soliciting the input from those directly affected by the decision. Selecting a police chief is no small task, especially in an area that is growing as fast as Huntersville. The atmosphere within the department was cold, sterile, and oppressive, largely due to the management style of the former chief. Whoever the new chief was going to be, he had a big task in front of him to try and turn this around because it was affecting the retention of employees.

Town administrators sought the input

from employees, elected officials, community leaders, and representatives of the chapter on what type of chief we would like to have. Over 100 people applied for the position, and it was eventually whittled down to eight and then finally to four.

As with the hiring of most police chiefs, an assessment process was conducted, and we were present at that assessment. We were able to see the final four candidates in person that were applying for the job and interact with them. We offered an opinion, as did others involved in the process, to select a chief. The opinion of most observing the assessment favored the selection of Deputy Chief Cleveland Spruill from Alexandria, Va.

We were also able to share the positive reviews received from the Virginia PBA about Chief Spruill with our administrators. Town administrators did their research, we did ours, and we shared ours with them. It gets better. Administrators from our town went to Alexandria, Va. for an extra level of assurance to make sure since this was such a critical decision based on the comments from employees. Their observation of how employees of the Alexandria PD were treated is what they wanted for employees in Huntersville.

One month into the new chief's career at Huntersville, a situation developed that would make the cold, oppressive, and sterile atmosphere that once was in the department fade away in short order. One of our members was confronted with an emergency involving his child while they were out of town, and his child had to be airlifted to Chapel Hill, two and a half hours away from Huntersville. Imagine the worry this member had when his son was airlifted and he had to drive to the hospital after his son was flown away. Then his wife and two other children had to return to their home to make arrangements for their other two children. Due to the distance and protracted time away from their home, their

worries were mounting. Our new chief immediately went to Chapel Hill with a captain to check on the member and then he made sure he had the resources to sustain his family in the short term. Then our new chief looked to the chapter for ideas to help sustain the member for the long term. This was a mission we were honored to be relied on for. The chapter

reached out to the SSPBA and immediately arranged for donations to be collected for the member's family, literally overnight. Their support of the effort was unceasing.

I think most would believe our input in this selection for a chief was helpful to administrators. The point I hope everyone

understands is that, initially, we were seen as a threat to administrators, but once they got to know us, we are now seen a resource for a variety of things. All it really requires is to remain professional and focused in your interactions with administrators and elected officials and be prepared to be there for the long haul. 🍀

## PBA ASSISTS MILITARY MEMBERS WHEN THEIR DEPARTMENTS VIOLATE FEDERAL LAW

BY JONI J. FLETCHER, DIRECTOR OF LEGAL SERVICES

**P**BA recognizes and appreciates the many members of our association who have served or who currently serve active military duty. PBA goes so far as to waive membership dues for members who have been called up to active duty and who have notified our membership department. Occasionally, members face obstacles to their law enforcement employment when their departments do not comply with federal law protecting the employment rights of military personnel. In two recent cases, PBA attorneys filed suit on behalf of members when their employers refused to follow the law.

In late 2013, a South Carolina member contacted the PBA legal department regarding his employment problem which he encountered the day before he was scheduled to come back to work at the sheriff's department after being on military duty. He had been employed by the sheriff's department for almost four years. During that time, he had had no disciplinary problems. The member had served in the Air Force and then the Air Force Reserves. In 2012, he was advised that the Air Force intended to move him to active duty for six months. In conjunction with his active duty, the member was able to work part-time at the sheriff's department. After doing so for several months, the member was informed by the county that he could no longer work for the county part-time.

Two weeks before the member's Air Force orders were to end, he contacted the department to advise that he would be returning full-time to the department. He asked when to report back to work and was told that his first shift would be



on October 2, 2013. He was told to report to the sheriff's office a day or two before his shift to get his equipment. When the member reported to the department on September 30th, he was told that he would now be a deputy even though he had been a corporal when he was called up to active military duty. The member was later called in and was handed a termination letter signed by the sheriff. The letter provided no reason for termination, and no reason was provided when the member asked about it.

PBA attorney Ward Bradley filed suit on the member's behalf under the Uniform Services Employment and Reemployment Rights Act (USERRA). The lawsuit cited several USERRA violations by the department, including 1) demoting the member from corporal to deputy upon his release from active military duty, 2) forcing the member to use accumulated leave without pay and paid vacation time while in active service with the Air Force, and 3) failing to continue the employment of the member when he presented himself for work upon his release by the Air Force.

The lawsuit was filed in November 2013 and was mediated several months later. The case settled for \$9,000 to compensate the member for lost wages and benefits, as well as attorney fees.

A Georgia member was employed with a police department and also served in the National Guard. Over several years, the member endured difficulties in dealing with the police department in regard to his military service. He also was passed over for several promotions that he was eligible for. Upon researching the matter, PBA legal determined there was basis for filing suit under USERRA as there were multiple examples of the member being discriminated against due to his military duties. Examples included 1) the member being denied promotional and transfer opportunities in favor of lesser qualified officers who did not have military obligations, 2) the department exhausting all of the member's vacation time while he was on military leave, 3) the department telling the member that upon his return from military duty that he would be required to repay the city for his payroll deductions, and 4) the member being told by the assistant police chief that he would have to choose between the police department and military service.

PBA general counsel Don English filed suit on the member's behalf in 2011. In 2013, the case settled, with the member receiving \$22,500 from the department.

It appears from our interaction with members that many employers either are not aware of their legal obligations to their employees who serve in the military or that the departments choose to disregard their obligations under USERRA. PBA believes, and federal law dictates, that law enforcement officers not be penalized when they serve their country in the military. 🍀

# NC MOUNTAIN CHAPTER OFFICER OF THE YEAR

BY BRANDON MCGAHA, NC MOUNTAIN CHAPTER PRESIDENT (NCPBA)

**N**icholas Stott with the Columbus Police Department was recognized as the North Carolina Mountain Chapter's 2013 Officer of the Year. Nicholas Stott is a lieutenant with his department with natural leadership skills and is a very active member of his local chapter as the PBF chair. Lt. Stott was very active in making the Police Benevolent Foundation's Glow Run in Columbus the PBF's most successful run to date.



*Nicholas Stott (left) being presented with the NC Mountain Chapter's Officer of the Year award from Chapter President Brandon McGaha (right)*

Nicholas has a Bachelor of Arts from UNC Chapel Hill and has completed the N.C. State University-Law Enforcement Executive Program as well as both the Criminal Investigation Certificate Program and the Traffic Enforcement Certificate Program at the North Carolina Justice Academy. He has general instructor and intermediate law enforcement certificates and also operates as a taskforce member with Homeland Security Investigations.

Some of Lt. Stott's achievements are; Region "C" Criminal Justice Advisory Committee-Uniformed Patrol Officer of the Year-2010; Mothers Against Drunk Drivers N.C. HERO Award-2010; National Criminal Enforcement Association Largest Street Currency Seizure-2011; and Region "C" Criminal Justice Advisory Committee-Richard Corley Award-2012.

According to Chief Chris Beddingfield, Lt. Stott has led his department in impaired driving arrests since coming to the agency in mid-2009. In a jurisdiction of only 986 residents and some

large thoroughfares, Stott had over 150 impaired arrests in 3 years time.

Nicholas has obtained numerous grants through the North Carolina Governor's Highway Safety Program (G.H.S.P.) to assist his department. The department received a traffic enforcement position, which Nicholas currently occupies, that funded all portions of the patrol vehicle, all equipment, and salary for three years.

Due to Lt. Stott's work, Columbus PD has also received a Bike Safe Grant which provided a police motor unit, all necessary equipment and training to start a Bike Safe program. He gained another grant for checkpoint equipment including an enclosed trailer, generator, light towers, cones, flashlights, signage, and reflective vests.

All of these grants were written and submitted by Lt. Stott while he maintains the position as county coordinator for G.H.S.P. Because of Lt. Stott's efforts, the Columbus PD has been recognized every year for 100% reporting since

participation began in 2010. The Columbus PD was also recognized as the top G.H.S.P. point earner of all agencies in North Carolina for 2012, and the department was in the top ten in 2011 thanks to Lt. Stott's work.

Nicholas is also an active criminal interdiction officer and has been involved in numerous large drug, weapon, and U.S. currency seizures. In 2011, he discovered \$159,785 in a hidden compartment of a vehicle that came through

a checkpoint. In 2012, he was involved in three separate currency seizures that totaled over \$100,000, seizing another \$33,000 in 2013.

An astounding statistic is that between grants, currency seized, controlled substance tax, and equipment obtained through G.H.S.P. points, Lt. Stott has obtained near \$500,000 toward the betterment and advancement of the Columbus Police Department from 2010 through 2013. Lt. Stott maintains his excellence while also being committed to his duties as a patrol supervisor.

He is a very valuable tool in fighting crime for the people of Columbus, NC. His contributions, along with the great leadership of Chief Chris Beddingfield, have made the Columbus Police Department a leader in western North Carolina and has given other departments of their size a blueprint for advancing their functions. Lt. Stott is a valued member of the N.C. Mountain Chapter and deserving of the Officer of the Year award. 🍀

**FIND THE SOUTHERN STATES POLICE  
BENEVOLENT ASSOCIATION ON SOCIAL MEDIA**



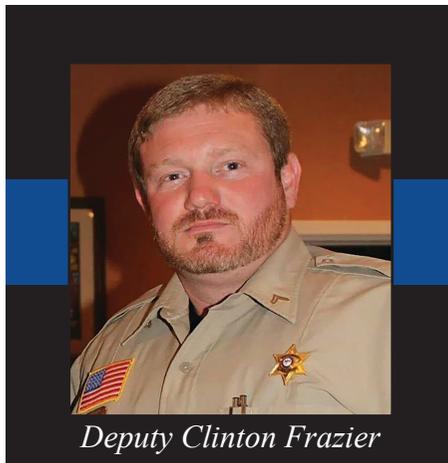
## NORTH EAST MISSISSIPPI CHAPTER SHOWS SUPPORT FOR THEIR FALLEN HERO

BY MICHAEL HALL, NORTH EAST MISSISSIPPI CHAPTER PRESIDENT (MSPBA)

**A**s a chapter president, you volunteer to improve law enforcement for your brothers and sisters in every way possible. Throughout my years as chapter president, I have helped with many fund raisers for families of officers who have paid the ultimate sacrifice. On a cold dark December night, I received one of the calls you really wish you didn't have to take. Deputy Clinton Frazier with the Union County Sheriff's Department had been killed in the line of duty in a traffic accident.

I called on my membership from the area and we hit the ground running. I had a meeting with the sheriff to get things in line for the fund raiser. Walmart of New Albany allowed us to use their property for the location of the fund raiser. The support from the community was just amazing. We were there from 6 am to 6 pm with the board members and general membership. That itself is a big task to pull off as each member works different shifts and areas.

Let me tell you how the event unfolded. As each and every employee walked into



the store, they had their hand out with money for the family. Back out the door with hot coffee and doughnuts for all volunteers, cases of drinks and water. Local churches brought food trays, fruit, and drinks for the volunteers. Everyone that walked up to the tent had a story to tell of how Deputy Frazier touched their lives and what he meant to them.

We had supporters from the sheriff's department as well as the police department volunteering their time to help with the fund raiser. Each department had

asked for officers, jailers, and dispatchers to help throughout the day with the event. Patrol cars and officers were lined up everywhere. The sheriff and chief of police were with us nearly the whole 12 hours as we held the event.

The owner of a local auction house stopped and asked for us to come by there around 7:00 pm. A few sheriff's deputies and I went to see them as promised. As soon as we walked through the door she said, "Where is your bucket?" We quickly gave her a bucket, and with it in hand, she walked up to the auctioneer, stopped everything in its tracks and gave her speech. There wasn't a dry eye in the building as she told how Deputy Frazier and the law enforcement officers in the area have helped her in the past. The event was a huge success for the Frazier family. We raised significant funds for Deputy Frazier's wife and children. I encourage every chapter president and board member to step up and lend a hand. It's a small sacrifice to help a hero's family. They paid the ultimate sacrifice; let's show our appreciation and give back to them. 🇺🇸

*Dear Mississippi PBA,*

*We, the family of fallen officer Union County MS Deputy Clinton Frazier, would like to take this opportunity to thank the many members of the Mississippi Police Benevolent Association for their effort in the recent fund raiser held at the New Albany, MS Walmart. The PBA successfully organized this effort just a few short days after the tragic loss of Clinton in the line of duty on December 18, 2013. There were numerous officers that greeted the patrons of Walmart that day with some of them "standing guard" the entire 12 hours.*

*The attendance of law enforcement officers from numerous departments along with the outpouring of the community was remarkable. The donations exceeded everyone's expectations and came at a time that funds were badly needed. A trust fund has been established for each of the three surviving daughters.*

*Again, we would like to thank the members of the Police Benevolent Association for their tremendous support and encouragement during this tragic loss.*

*Sincerely,  
The Family of Deputy Clinton Frazier*

# NORTH CAROLINA PBA MAKES CRITICAL ENDORSEMENTS IN NORTH CAROLINA COURT OF APPEALS AND SUPREME COURT RACES

BY RANDY BYRD – NCPBA DIVISION PRESIDENT

**A**s part of the PBA's core mission we strongly believe in advocating for our members in multiple forums. This includes our endorsement of candidates seeking various offices. Nowhere is this more critical than the North Carolina Court of Appeals and Supreme Court.

The quality of justice in our courts for PBA members largely depends upon the quality of our judges who preside on the bench. The PBA screening process involves our members who serve on a committee that identifies the judicial candidates most likely to interpret our constitution and law favorably for the best overall interest for law enforcement officers.

In the last 25 years, the PBA has appeared in cases all across North Carolina fighting to protect our members through the judicial system. The PBA's success is predicated in part upon a more informed judiciary that is a result of our thorough process. This has led to favorable precedents in our appellate courts and better service for our members.

Our process has judicial candidates meet with us to answer and discuss our questions presented to them. These candidates' responses are evaluated in a graded format, and the committee discusses the results before making final recommendations to the North Carolina Division Board. The board then evaluates



Chief Justice Mark Martin - NC Supreme Court

**"I am highly honored to be the PBA endorsed candidate for Chief Justice of the Supreme Court and to have the support of our law enforcement officers." - Chief Justice Mark Martin**

the recommendations before voting on the endorsement of candidates. This interaction with the judicial candidates allows them to learn of the challenges we face and how they play a part a critical role in the lives of law enforcement officers.

Political decisions made at all levels of government occur throughout America on a daily basis. These decisions determine the standard of living, safety, and the rights and benefits of law enforcement officers. The PBA, since its inception, has been an advocate to properly influence these decisions. As a result of a changing political landscape, there is an even greater need for advocacy and involvement by officers. At every turn, our profession continues to come under attack by calculated legislative and executive actions by many public officials. The best way to alter these attacks is by political strength and to elect informed candidates that understand our profession and the challenges we face as officers.

Successful political endorsements require hard work, objectivity, commitment, and knowledge of the issues that are critically important to our profession. The wave of politicians who are focused on destroying officer employment rights and making all officers at-will employees must be challenged at every turn. Those who fight hard to protect and enhance these rights through political advocacy are going to prevail over those who sit on the sidelines. Unfortunately, we work in a profession where officers by and large consider political involvement someone else's problem and would rather just bemoan their discontent to fellow officers. This has to change. PBA members can no longer just complain; they have to become involved.



North Carolina Police Benevolent Association members with Robin Hudson - Associate Justice - NC Supreme Court



North Carolina Police Benevolent Association members with NC Court of Appeals Candidate Lucy Inman

On April 7th and June 6th of this year, many dedicated members of the PBA volunteered their time to meet with candidates seeking election/re-election to the North Carolina Court of Appeals and Supreme Court. The candidates were asked a series of questions related to the following issues: State Constitutional Claims, Constitutional Interpretation, Due Process for Law Enforcement Officers, First Amendment Protection for Law Enforcement Officers, Privacy of Law Enforcement Personnel Files, Equal Protection, Merit Based Qualifications, and to Identify Judges that are Respected or Admired. 🍀

Based on the committee’s recommendations and a division board vote, the PBA has chosen to endorse the following candidates in the General Election. A vote for these candidates is a vote for the men and women of law enforcement and the citizens they serve. It is also a vote for a well-informed judiciary.

- Mark Martin – Chief Justice, NC Supreme Court**
- Sam Ervin IV – Associate Justice, NC Supreme Court**
- Robin Hudson – Associate Justice, NC Supreme Court**
- Cheri Beasley – Associate Justice, NC Supreme Court**
- Mark Davis – Judge, NC Court of Appeals**
- Lucy Inman – Judge, NC Court of Appeals**
- Donna Stroud – Judge, NC Court of Appeals**



NCPBA Sr. Vice President Wardell Williams and NC Appeals Court Judge Sam Ervin IV - Candidate for NC Supreme Court

***“I value my relationship with the PBA. I am proud to have received the PBA’s endorsement in my prior races and am grateful that the PBA has endorsed my candidacy for the Supreme Court this year. I believe that the PBA’s endorsement is important to members of the North Carolina voting public.” - Judge Sam Ervin IV***

***“The PBA has created an exemplary formula for endorsing good candidates for public office. Their process is always professional and thorough. Great efforts are made during the interview to examine a candidate’s credentials, qualifications and record of service. It has always been an honor to participate in the PBA process.” - Associate Justice Cheri Beasley***



Cheri Beasley – Associate Justice NC Supreme Court with NCPBA President Randy Byrd

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# 3 REASONS WHY YOU SHOULD JOIN THE SSPBA



## **1. THE LEGAL REPRESENTATION WE OFFER OUR MEMBERS IS THE BEST IN THE BUSINESS!**

The PBA provides an attorney to contact you at the scene of all on-duty shootings or serious injuries arising from your law enforcement duties, going to the scene if necessary. The PBA provides an attorney to protect your individual interests if you are named as defendant in any civil or criminal action arising out of your duties as a law enforcement officer. **NO CAP or LIMIT.** Other organizations say they can match our legal benefits, but in the end, the PBA stands alone on this one.

## **2. THE PBA TAKES A STAND ON LEGISLATIVE MATTERS THAT AFFECT OUR MEMBERS!**

The PBA maintains a professional staff of lobbyists to aid in obtaining legislation beneficial to the law enforcement profession. If there is critical legislation out there that will affect your job as a law enforcement professional, the PBA is ready to take action and let your voice be heard.

## **3. THE PBA PROVIDES YOUR LOVED ONES WITH THE SECURITY OF ONE OF THE BEST DEATH BENEFIT PLANS IN THE INDUSTRY IN THE EVENT YOU ARE LOST IN THE LINE OF DUTY.**

We believe that our accidental death benefit is the most generous of any such plan in our service area. Your beneficiary will receive: (1) your base salary for one year if you are killed in the performance of your law enforcement duties (maximum payment: \$60,000), or (2) \$5,000 if not an occupational death, or to retired and reserve members, in accordance with the terms and limitations of our insurance policy which underwrites the benefit.

\*A full description of these benefits and all others that come with a PBA membership can be found by visiting [www.sspba.org](http://www.sspba.org).

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