



A publication of the Southern States PBA

BLUE REVIEW

AN IN-DEPTH LOOK AT THE PBA ISSUE 9



**POLICE LIVES MATTER:
INCREASING POLITICIZED
INDICTMENTS THREATEN THE
LEGAL SAFETY OF OFFICERS**

**5 NOTORIOUS OUTLAWS
FROM ALABAMA'S WILD
WEST DAYS**



**NCPBA ASSISTS
EMBATTLED POLICE
DEPARTMENT:
NEW CHIEF NOW SEEKS
CHAPTER INPUT**



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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Renee Dixon
Chief Operating
Officer, SSPBA

Renee handles the day-to-day operations of the SSPBA under CEO Jack Roberts and has been with the Southern States Police Benevolent Association for 29 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."

EDITOR: Tim Reichert
Director of Communications and
Public Affairs, SSPBA
treichert@sspba.org

CO-EDITOR: Kaylan Storey
Public Relations Coordinator, SSPBA
kstorey@sspba.org

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SSPBA HOSTS INAUGURAL CRITICAL INCIDENT ATTORNEY SEMINAR

BY KAYLAN STOREY, PUBLIC RELATIONS COORDINATOR, SSPBA



PBA attorneys from across the state of Georgia attended the training presented by members of the Southern States PBA legal department.

The first Georgia seminar for PBA attorneys took place on Friday, September 11, 2015, at the Hilton Garden Inn in Macon, Ga. The seminar, titled “Representing Law Enforcement Officers Involved in Critical Incidents in Today’s Volatile Environment,” was an interactive event attended by 20 PBA referral attorneys from all across Georgia.

The seminar was created to help educate the PBA network of attorneys on how to handle the growing number of member cases. SSPBA Director of Legal Services Joni Fletcher, General Counsel Don English and SSPBA Attorney Grady Dukes led the event.

Don English detailed the necessary steps every attorney should take when responding to a member’s critical incident. “The attorney needs to respond to the location (of the critical incident). Let the officer know they are not alone,” English said. English went on to offer advice and tips for how best to protect the officer and gain as much information as possible from the scene.

When Fletcher asked how many attorneys in the room had experience handling a critical incident through PBA, nearly every hand went up. The number is only

expected to rise given the current climate with law enforcement, the media and the public. Grady Dukes described the current landscape as a “media feeding frenzy,” and rightly so. Dukes went on to discuss how the media brings all kinds of attention to an officer’s case. And unfortunately, privacy is not a given anymore. “The media used to keep officers’ names private, not anymore. The media lets that go out now,” Dukes said.

Dukes went on to discuss how the Georgia Bureau of Investigation is called in on basically every critical incident involving law enforcement officers now. Therefore,

“We couldn’t properly represent our members without your help”

-Reneé Dixon, SSPBA Chief Operating Officer

it is even more important now that PBA attorneys know all of their available resources to best protect PBA members and officers. To ensure the attorneys in attendance were best prepared, the SSPBA provided them with copies of the GBI manual on use of force incidents. The manual included detailed information on

which questions the GBI will ask the officer during an investigation.

Georgia is unique in that public officers have the opportunity to speak to the grand jury when a case against the officer is presented. A lengthy discussion regarding such grand jury presentments was a focal point of the seminar. One PBA attorney in attendance, Hayden Willis of Moultrie, Ga. added, “Your client has the last word at the presentment. Don’t let the prosecutor try and revoke that.”

The event concluded with a panel discussion of related issues, including social media and body cameras. Panel member and Statesboro attorney W. Keith Barber said, “I tell my officers to shut down Facebook or any social media.” As departments are increasingly issuing body camera policies, it was discussed by the attorneys present that there are pros and cons of such policies with privacy interests being pitted against the possible positive evidentiary value of having interactions captured on film.

Chief Operating Officer Reneé Dixon concluded the seminar by thanking the attorneys for attending. “We couldn’t properly represent our members without your help,” she stated. ■

NCPBA ASSISTS EMBATTLED POLICE DEPARTMENT WITH OFFICER CONCERNS

BY ANGELA TULLIS, NC MOUNTAIN CHAPTER BOARD MEMBER, NCPBA



Angela Tullis,
NC Mountain Chapter Board Member

After enduring a lengthy battle with former Asheville police chief William Anderson and members of Asheville City Council, officers working for the Asheville Police Department reached out to the North Carolina PBA for assistance in October of 2014. Concerns ranged from low morale – stemming from insufficient manning levels and administrative failures – to widespread expired radar certifications and labor law violations. Forty-four officers, nearly a quarter of sworn personnel, signed a petition citing no confidence in the department's leadership. Mountain Chapter President Brandon McGaha was notified by members within the department seeking assistance, and from there the PBA process was in full swing.

Forty-four sworn personnel signed a petition, along with a letter, detailing their lack of confidence in APD leadership, and delivered it to both city council and the city manager. PBA responded quickly to the plea. Executive Director John Midgett penned a letter requesting an SBI investigation: "As these matters continue to grow out of control, we submit that a

proper investigation is the only way to hold responsible parties accountable and properly protect those that have obeyed their sworn duty to report malfeasance and wrong doing." Mayor Esther Manheimer declined the proposal, though in an unprecedented move, the city appointed Asheville Fire Chief Scott Burnette to assist in implementing an improvement plan suggested by an outside consulting firm, Matrix, Inc., which was hired by the city. Both Chief Burnette and officials with Matrix met with and solicited input from PBA chapter leaders.

Midgett attended the October 27th council meeting and spoke with Manheimer, again expressing the need for an investigation into the departmental leadership. He stated to the *Asheville Citizen Times*, "Our position has not changed. These are allegations of criminal as well as administrative misconduct." Weeks later, Anderson announced that he would be retiring December 31, 2014. The *Citizen Times* reported that he promised not to sue the city and accepted a payment of \$35,000 in a retirement settlement.

In January 2015, Interim Chief Steve Belcher took the helm until a permanent replacement could be hired. He excelled in this capacity previously with other troubled departments, including Bell Police Department in Los Angeles County, Ca. He passed the baton to Chief Tammy Hooper on July 20, 2015. Chief Hooper was selected after an extensive nationwide search and was the number one choice of the PBA chapter. She previously held the rank of deputy chief of police for the City of Alexandria, Va., with more than 26 years of law enforcement experience. She is experienced in property and evidence oversight, which could prove invaluable, considering the APD's history of problems in this area. She attained many accomplishments of note while with Alexandria, including a reduction in attrition from 38% to 3%. According to a Matrix questionnaire,

conducted without officers having to provide their names, as part of the review, an overwhelming number of officers expressed concern over the heavy number of employees leaving the department and attributed it to a low morale caused by distrust in leadership. This seemed to support the original petitioners' concerns, including that the number of officers signing the petition would have likely been even higher if they could have remained anonymous, without fear of reprisal. In an interview with the *Asheville Citizen Times*, Officer Rick Tullis who signed the petition and spoke for the group, stated that, "It is because of their desire to uphold their sworn duties that these officers felt compelled to speak out about the distrust that the leadership within the Asheville Police Department has created. That distrust could impede and hinder officers who have to make split second decisions on the street, creating a dangerous situation for the public and police." Chief Hooper appears to have a great deal of organizational and personnel issues to consider and address, but her background suggests that she is well prepared for the task.

In August 2015, Chief Hooper contacted PBA and asked for a PBA chapter representative to serve on two departmental committees to review and make recommendations to the Chief on promotional policies and disciplinary and appeal policies within the police department.

Officer Rick Tullis, who now serves as vice president of the PBA Mountain Chapter, was selected to represent PBA on the Promotion Review committee which began meeting on August 26, 2015. Fellow board member Wilson Bunn was chose to serve on the disciplinary committee.

Under Chief Hooper's new leadership and clear commitment to the concerns of the officers under her command, officers are eager to transition into a productive, positive climate within the rank and file, as well as beyond, and into the community that they serve. ■

MOBILE COUNTY CHAPTER ADVOCATES EQUAL RIGHTS FOR DEPUTIES

BY KAYLAN STOREY, PUBLIC RELATIONS COORDINATOR, SSPBA



The Mobile County Chapter of the Alabama PBA achieved a major win for deputies recently. By maintaining a close relationship with Sheriff Sam Cochran, the Mobile Chapter advocated for deputies' rights.

Sheriff Cochran was endorsed by the PBA during his bid for re-election and his third term in 2014. The process for candidates to become endorsed by the PBA is very thorough. Each chapter can hold their own political screenings for candidates. The candidates are invited to the screenings and given a specific set of pre-approved questions. The chapter members interview the candidates to be sure that they understand the PBA standpoint of fighting for better rights and benefits for law enforcement members.

For Mobile, Al. specifically, Sam Cochran was the candidate chosen to receive the prestigious honor of being endorsed by the ALPBA. Cochran is a native Mobilian who began his law enforcement career with the Mobile Police Department. Starting out as a police cadet in the late 1970s, Cochran served the last 10 years

as chief of police. He has been the sheriff of Mobile since 2006.

During the last political screening of the Mobile County Chapter, PBA members advocated for better pay for their deputies. As it currently stood, if deputies were called out, they only received regular pay. However, deputies' detective counterparts from the Mobile Police Department would receive double time and a half if they were called out while not on standby duty. The Mobile Chapter knew that this was not fair and that their deputies deserved the same benefits. Members from the Mobile Chapter approached PBA endorsed candidate and sheriff Sam Cochran, to help. At first, he was resistant and unwavering on the matter. When it comes to advocating for the law enforcement members' rights, the PBA won't give up on receiving what is fair.

By staying involved in political affairs, the Mobile County Chapter of the PBA was successful. Sheriff Cochran recently agreed that call out detectives and deputies should be compensated equally for their work. The sheriff agreed

to implement the policy for the deputies. PBA did that. By fighting for the rights of the members, deputies will be equally and fairly compensated.

Alabama Division President Donald Scott would like to thank the Mobile County Chapter for their hard work. "Congratulations to the board of directors who endorsed Sam Cochran. Also, thank you to Sam Cochran for giving these well-deserved rights to law enforcement officers," Scott said. 🍀

**LOG-IN TO YOUR ACCOUNT AT
WWW.SSPBA.ORG
AND UPDATE YOUR
INFORMATION**



PBA HELPS MISSISSIPPI MEMBER OBTAIN EARNED PROMOTION

BY JONI J. FLETCHER, DIRECTOR OF LEGAL SERVICES, SSPBA AND
ATTORNEY KEN WALLEY, PAGE KRUGER & HOLLAND, P.A.

PBA member Teresa Songer recently became a lieutenant with the Columbus Police Department. Becoming a lieutenant was far from easy for this 19-year veteran, though. Despite passing the Lieutenant's exam, Songer was denied her promotion with the department. This is where the PBA stepped in.

In July of 2014, there were two lieutenant positions open with the Columbus Police Department. Songer (who was a sergeant at the time) and two other internal candidates applied. They each took a written test, submitted an essay and conducted oral interviews. The oral interviews were subjectively scored. The candidates were also evaluated by their years of service and past performance reviews. All three passed the examination and were deemed eligible for promotion.

The candidate with the highest score was promoted to the rank of lieutenant. However, the department declined to offer any promotion to the second open position, causing the second-place candidate to leave the department and leaving Sgt. Songer the only eligible candidate. Though it was a passing score, Chief Tony Carlton cited Songer's low examination score as the reason for his decision not to recommend her for promotion. Though she performed well on most of the exam, Songer's oral interview score was a mere 7%. Her interview panel was mostly composed of officers from other departments selected at the request of Chief Carlton, three of whom awarded Songer a score of zero. Prior to applying for the lieutenant position, Songer served as the department's public relations officer and received excellent performance reviews in that capacity. Given the department's trust in her to represent them before the media, Sgt. Songer questioned the validity of this low score, but also whether or not the department could decline to promote the only eligible candidate at all.



Sgt. Songer immediately filed a grievance and contacted the PBA. While PBA does not intervene in all promotional issues, PBA legal coverage is provided when there is clear evidence of a department violating its promotional policies. PBA assigned Page, Kruger, and Holland, P.A. in Flowood, Miss., to represent Sgt. Songer. Associate attorney Ken Walley attended a meeting of the administrative committee of the Columbus City Council in October 2014 and pointed out the clear problems in the administration of the promotional interview and that Columbus' Civil Service Rules don't permit the chief of police to refuse promotion to the only eligible candidate. When the city council denied Sgt. Songer's grievance, Mr. Walley appealed to the civil service commission.

The city attorney and the Civil Service Commission responded by saying there was no express provision in the civil service rules to allow for an appeal of the denial of a promotion. With the approval of PBA, Mr. Walley then petitioned the circuit court for review, which remanded the grievance to the Commission for a hearing.

At the Civil Service Commission hearing

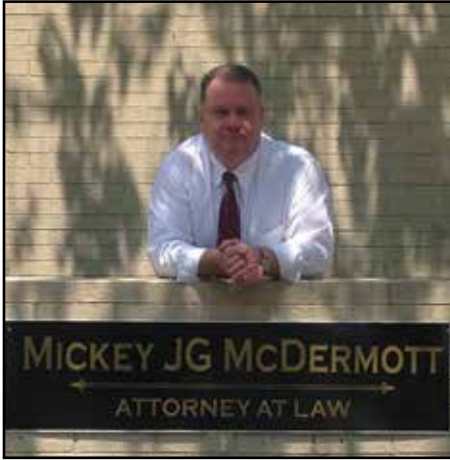
on June 24, 2015, Mr. Walley made the case that according to Columbus' Civil Service Rules, "The position will be offered to the candidate with the highest number of total points. The remaining candidates will be placed on a promotional list from which promotions will be made for a period of one year." Mr. Walley argued that since Sgt. Songer was the only officer on the eligibility list, Chief Carlton had no authority to decline a recommendation for her promotion. On the stand, Chief Carlton admitted that language of the rules did not explicitly give him discretion to decline promotion to the only qualified candidate, but he thought he should have this authority.

Both Chief Carlton and Songer's former supervisor, Waynesboro Police Chief Oscar Lewis testified about the administration of promotional interviews. Chief Lewis stated that Songer's score didn't make sense, and that he wouldn't give a "zero" score to his worst enemy.

Despite the testimony concerning the administration of the interview, the Civil Service Commission ultimately decided only on the question of Chief Carlton's interpretation of the promotional rules. After five minutes of deliberation, the Commission unanimously determined that there was no discretion to decline to promote an eligible candidate under the civil service rules. The Commission recommended Sgt. Songer to the city council for promotion, backdated with pay to the date at which she should have been promoted.

When reached for comment, Lt. Songer stated: "I was highly impressed with the PBA. They did exactly what they promised: to represent me and ensure that I'm treated fairly by my department. It really works!" Her attorney, Ken Walley, said "Terrie's been a dedicated servant of Columbus for decades. I'm just glad she's getting the recognition she deserves." ■

ATTORNEY SPOTLIGHT: MICKEY MCDERMOTT



Attorney Mickey McDermott has proudly represented PBA members in Alabama for 16 years. McDermott usually handles employment issues and officer involved shootings, but has recently added more civil rights cases to his roster. These cases include defending First Amendment rights as more departments have begun monitoring officers' personal social media profiles.

As a former police officer in Montgomery, McDermott's work with the PBA is near to his heart. In fact, his work as a police officer led him to later become an attorney for PBA members. "An officer I worked with before was a member and he had an issue on the job. When he needed help, he specifically requested me (as his attorney) through the PBA," McDermott said. Since starting with the PBA, McDermott has handled dozens of cases for PBA members. "I have averaged about two cases a month for the past six years," McDermott added.

When asked what is the most rewarding part of donating his time and services, McDermott was adamant about protecting those who protect us. "First and foremost, when a young officer has used deadly force, a lot of the time I have to walk them through the process. They may be emotionally and physically injured, they are apprehensive or confused. In that moment, no one is taking care of them or checking to be sure that they're really all

right. I take pride in seeing them treated as to their physical and emotional needs, not just the case. They have been through so much training and experience. You have to protect that investment. We need that, because once the investigation is over and they're cleared to return to the job, we need them back out there, because the thin blue line gets thinner every day," McDermott said.

Being selected for an attorney spotlight is a great sense of recognition for McDermott. "It means recognition of the years of 1:00 a.m. calls to assist an officer sitting in a patrol car or hospital room. I am honored to be there and be that person standing next to them," McDermott said.

Mickey McDermott's Law Offices are Located at 441 High Street, Montgomery, Alabama 36104 & 133 Tuskeena Street in Hayneville, Alabama. He may also be reached by phone at (334) 264-5151 and (334) 220-8519 for emergencies.

TENNESSEE RACE 4 THE FALLEN SPONSOR BRINGS LARGE CROWD

BY KAYLAN STOREY, PUBLIC RELATIONS COORDINATOR, SSPBA



The Mt. Juliet, Tenn. Race for the Fallen 5K Glow Run hosted a great turnout of Horace Small employees and family members. In total, more than 100 employees and their family members participated in the Glow Run. While they were there to support the Police Benevolent Foundation and the law enforcement community, they were also there for another reason. Horace Small associates banded together to celebrate the life of Kevin Stewart, Vice President of Re-

gional Sales, who passed away earlier this year after a short battle with cancer.

Horace Small has been a proud supporter of the Race for the Fallen 5K Glow Run for two years. As this year's lead sponsor, their presence at the Mt. Juliet race was even more prominent than the previous year, in more ways than one. Employees and family members wore specially designed neon shirts to show their solidarity as they brought Kevin's memory to life.

Kevin Stewart worked with Horace Small for almost 20 years. He was always one of the strongest ambassadors for the brand. "Kevin brought a deep level of passion to his work each day, and his enthusiasm for the Horace Small brand was infectious," said Aimee Say, Marketing Manager, Horace Small. "Seeing our associates come together and support a wonderful cause is a perfect tribute to Kevin. He would have loved this."

The Horace Small brand and the Police Benevolent Foundation are perfect partners to execute the Race for the Fallen. As a uniform company that outfits the law enforcement community, Horace Small offers streamlined and engineered designs to protect our men and women in blue. Horace Small is a great company to have supporting the Police Benevolent Foundation.

To become a sponsor, get involved or participate in an upcoming race, visit www.raceforthe fallen.com.

SSPBA LEGAL ACTIVITY HIGHER THAN EVER

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

The SSPBA legal department attempts to inform members of the number of legal cases we have open at any given time by posting a chart titled “What We Are Up To” in the Legal section of the SSPBA web page (www.sspba.org). Our department recently reached a notable milestone when we posted a total of over 1000 open legal cases.

Among the variety of types of cases covered by SSPBA are disciplinary and grievance matters, certification issues, legal opinions, and legal defense cases such as shootings, deaths in custody, and lawsuits. Typically, lawsuits are the most numerous types of cases, with shootings and disciplinary matters following behind. For the time period ending September 30th, our department had open 355 lawsuits, 231 shooting cases, and 182 disciplinary matters. The total number of open cases was 1048.

The people responsible for managing and maintaining these cases are the SSPBA legal staff. Our department currently consists of five attorneys, a paralegal, a case manager, an administrative assistant and a receptionist. In addition, SSPBA executive directors often assist members in their respective states at the early stages of the members’ legal cases, as do local chapters. Through this group effort, SSPBA works to ensure that our members’ legal needs are addressed efficiently and effectively.

ALL OPEN LEGAL CASES FOR SSPBA

Legal Defense - Accident	18
Legal Defense - Civil	355
Legal Defense - Criminal	66
Legal Defense - Death/ Injury in Custody	37
Legal Defense - Shooting	231
Disciplinary	182
Grievance	69
Legal Opinions	48
Certification	39
Pension/Retirement	3

TOTAL: 1048

As of September 30, 2015

FIND THE SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION ON SOCIAL MEDIA



SPOTSYLVANIA CHAPTER, NEW AND THRIVING

BY KAYLAN STOREY, PUBLIC RELATIONS COORDINATOR, SSPBA

Since obtaining full chapter status on May 1, 2015, the Spotsylvania Chapter of the Virginia PBA has grown quickly. Last year, prior to forming a steering committee, there were 25 members under the Culpepper Chapter with the Spotsylvania Sheriff's Office. In the time span of three months since the Spotsylvania Chapter was formed, the chapter has welcomed 40 additional members.

One person who has been a driving force behind the creation of the Spotsylvania Chapter is Tim Bryner. A member of the PBA since 2006, Bryner has seen the numerous benefits of the organization. "Another employee of the Sheriff's Office brought the VAPBA to my attention. Initially, the legal defense benefit is why I joined," Bryner said.

In 2014, several members of the Culpepper Chapter of the VAPBA who worked for the Spotsylvania County Sheriff's Office had a desire to form their own chapter. Virginia Executive Director Sean McGowan helped show Tim Bryner the steps that were required to form a PBA chapter. McGowan invited Bryner to attend the 2014 Virginia PBA Board of Directors meeting in Richmond. During the following months after the VAPBA board meeting, a steering committee was formed. Tim Bryner, Ed Perkins, Chad Polliard and Mark Buccola served as members of the steering committee. Virginia PBA recruiter Jim Suttentfield also made several visits to the Spotsylvania Sheriff's Office to recruit new members. Due to the geographic proximity, PBA members from the Fredericksburg Police Department were also brought in to the newly formed Spotsylvania Chapter.



Spotsylvania Chapter President, Tim Bryner

Thanks to his dedication and support of the new Spotsylvania Chapter, Tim Bryner was elected as chapter president. The nomination and election of Bryner as chapter president make him very proud.

"I feel that since I have been placed in the position of chapter president, it is my duty to try and ensure that the Spotsylvania Chapter truly represents the desires of its members. I want the membership to know that there is an organization, and its president, that will stand behind them when needed and look out for their best interests," Bryner said. Steering committee members Perkins and Buccola serve on the Spotsylvania board. Ed Perkins is the senior vice president and PBA member Ed Boyd is the board secretary. Mark Buccola is the PAC chair. All were crucial in forming and building the Spotsylvania Chapter for VAPBA members.

Spotsylvania Chapter President Tim Bryner knows how important having a

local chapter is for PBA members. "I have had a desire for some time to create our own chapter within the Virginia Division of the SSPBA. Before attaining our own chapter status, employees of the Spotsylvania County Sheriff's Office were placed in the Culpepper Chapter. I felt that it was important that the members of the Spotsylvania County Sheriff's Office have a chapter that was composed of membership that would be more centrally focused on our local needs and interests. This is not to say that the Culpepper Chapter would not have carried the torch for us when needed, but that I felt a local chapter would be more conducive to carrying our own torch," Bryner said.

Bryner went on to say, "Having been a member for quite some time now, I saw all that the PBA had to offer, beyond just legal defense. By forming the Spotsylvania Chapter, I feel that the deputies who put their lives on the line every day for their community have a stronger voice. The present sheriff in Spotsylvania County has been extremely supportive of our efforts to grow our membership. He does try and look out for his employees by pursuing pay raises and additional staffing. However, I feel that it is extremely important that the deputies of the sheriff's office have a voice separate from the sheriff. A voice that the community can hear in the future that will make them aware of where we stand, where we want to go, and who we support that we feel can get us there. What better organization to be part of and have our own chapter to work towards these goals than the PBA that coins itself as *The Voice of Law Enforcement Officers*." ■

BONDS ISSUED TO BUILD A MUSEUM AND CREATE A NATIONAL CENTER FOR LAW ENFORCEMENT

The National Law Enforcement Officers Memorial Fund announced that it is releasing nearly \$100 million worth of high-yield, non-rated, tax-exempt bonds to build the only national museum dedicated to telling the story of law enforcement in America.



Officers Memorial, which contains 20,538 names of fallen officers. New names are added to the walls of the Memorial each year and thousands of mourners attend a candlelight vigil to honor them.

“The museum is a critical component in making this location in

The congressionally-authorized museum will complement the National Law Enforcement Officers Memorial and will complete the development of a National Center for Law Enforcement that will highlight and archive law enforcement achievements and history. More importantly, the center will provide a unifying place to strengthen the ties between law enforcement and the communities they serve through knowledge, compassion and dialogue.

Most Americans know the sacrifices that law enforcement officers make in order to serve and protect. However, recent events

have redefined the relationship between law enforcement and citizens and have created tension and divide, leaving some citizens questioning and criticizing the role of law enforcement. It has never been more important to bring law enforcement and the community together to join forces and tackle the tougher issues of our time. A national platform and national center provide a place where law enforcement and citizens can connect, discuss and inform.

The museum will be built in Judiciary Square in Washington, DC, and adjacent to the National Law Enforcement

Washington, DC, a national center where our fallen heroes can be honored and visitors to the nation’s capital can learn about American law enforcement and the many brave men and women who work to keep us safe,” stated Craig Floyd, chairman and CEO of the National Law Enforcement Officers Memorial Fund. “More importantly, this national law enforcement center will provide a platform and location for law enforcement officials, the public, elected officials and the media to interact and hold educational forums and dialogue on all law enforcement issues of the day,” Floyd explained. ■

PBA THERE FOR MEMBER IN TIME OF NEED

BY KAYLAN STOREY, PUBLIC RELATIONS COORDINATOR, SSPBA

The mission of the SSPBA is to be *The Voice of Law Enforcement Officers*. This means consistently ensuring that PBA members have support during difficult situations. Including on-duty shootings, grievances and disciplinary actions. PBA members are thankful for that support when such instances occur.

One PBA member who is grateful for his membership and the work of the PBA is Robert Vazquez from South Carolina. In September of 2014, Officer Vazquez was involved in an on-duty shooting. Vazquez responded to a domestic dispute call already in progress. When he arrived on scene, other units were there and the SWAT team was getting ready. Vazquez was told to go to the rear of the home. At the time, they thought the suspect was well contained in the house. Behind the

home, about ten feet down an embankment, were railroad tracks. As Vazquez stood behind the house, other officers filled in the backyard and down the railroad tracks, ready to apprehend the suspect. Moments later, Vazquez heard his lieutenant challenging someone who was on the railroad tracks. Then Vazquez heard shots exchanged. There was a new moon and no lights to aide the officers, so vision was limited. Vazquez said, “I saw the crown of muzzle flash, I saw a light colored shirt (and knew it wasn’t an officer, but instead the suspect.) I discharged my weapon four times and then saw the suspect lay back.” After checking to be sure his fellow officers were okay, Vazquez’s lieutenant picked up the suspect’s firearm and called for medical attention. About 15 minutes later, Vazquez was called to the command post and handed over his weapon. Then Vazquez

made contact with the PBA.

Moments after calling the PBA, Vazquez was put in contact with a local attorney, Peter Brown. Mr. Brown arrived at the police department to meet Mr. Vazquez twenty minutes after the initial call to the PBA. Mr. Brown and the PBA were there for Officer Vazquez throughout the entire investigation. Officer Vazquez was cleared of any wrongdoing and was thankful to have the PBA as his advocate.

Officer Vazquez’s case is just one example of the many ways the PBA works to advocate and support members in their time of need. Vazquez personally knows the benefits of being a PBA member, and would encourage his fellow officers to join. “Other officers should definitely join the PBA to get some legal defense and have that protection,” Vazquez said. ■

8 PRIVACY REMINDERS FOR COPS ABOUT LIVING IN THE FISHBOWL

BY BOOKER HODGES, POLICEONE.COM CONTRIBUTING WRITER

GIVEN THE CURRENT STATE OF EVENTS IN OUR PROFESSION, WE NEED TO TEACH NEW OFFICERS HOW TO BE PREPARED FOR LIFE IN THE FISHBOWL



If you've worked in law enforcement for longer than a day, you've heard someone say, "I remember when we used to be able to ___." As the years go on, the lists of "we used to be able to ___" gets longer. Given the current state of events in our profession, we need to realize that instead of teaching new officers all the "we used to's" we need to prepare them for life in the fishbowl.

Our patrol cars are equipped with GPS units that can tell how fast we're driving, if our headlights are activated, if we're wearing our seatbelts, and if we're turning corners too fast. Our squad cameras are recording all the time, and most new cameras record up to 60 seconds prior to being activated. Everyone has a smart phone with a camera ready and waiting to film "police action."

Most of us expect to relinquish some degree of privacy while driving in our squad car or interacting with members of the public, but as a profession, we have not prepared ourselves for life in the fishbowl.

All you have to do is read the newspaper or watch the news from time to time and you will read about members of our profession who have been disciplined for everything from Facebook posts to sending inappropriate text messages while at work. Below are a few tips to keep in mind while living in the fishbowl — working your job in the profession of law enforcement in this modern era.

1. Conduct yourself as if you're always being watched — because you are.
2. Tell your immediate family members to conduct themselves as if they are always being watched — because they are.
3. Do not post anything on any website that you are not willing to answer for. There is no such thing as anonymous when posting stuff online.
4. Remember everything you do off-duty is also subject to public scrutiny.
5. Consider not having a social media account. God forbid you are involved in a high-profile incident and the media — or

those who would seek to do you harm — find that and begin harassing you, your friends, or family members that they were able to find through social media.

6. Remember that the record button is always on even when you think it's not.

7. Check websites like Spokeo to see if your personal information is listed. If so you can contact them and they will remove your information.

8. Remember that you chose to be a public servant. Very public.

We used to be able to do things without worrying about being watched all the time, but that's no longer the case. Our family members and friends have also joined us in the fishbowl because of technology and the public's hunger for information. Keeping these eight tips in mind will help you and those you care about thrive and stay safe in this great profession. ■

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George Almond Officer of the Year Banquet Through the Years



The PBA has long held the reputation for educating the public about the daily work of law enforcement officers and the sacrifices they make to keep their communities safe. Through these education efforts many relationships with the community have led to partnerships that have benefited members of the PBA. The PBA also has an extensive history of creating solid and sustainable relationships with elected officials to effect positive change for their members.

The Cary Chapter continues to take this process of education, partnerships, and relationship building to a new level. Every year the Cary Chapter brings together elected officials, officers, and the community to showcase the talents of police officers and honor the legacy of retired Detective George Almond.

The Cary Chapter Board, in their first year, chose to sponsor an Officer of the Year award in honor of retired Detective George Almond. Almond, a PBA member, was shot in the line of duty in October of 2001. He survived the shooting and returned to duty as a detective in juvenile investigations before retiring in August of 2004. The award recognizes outstanding achievement in the areas of leadership, community service, mentoring, excellence in performance and valor.

As part of the banquet, thousands of dollars have been raised for the Police Benevolent Foundation through silent and live auctions. These funds are used to replace the salaries of fallen officers, provide disaster relief for law enforcement officers displaced through natural disasters, provide scholarships for the children of law enforcement, and conduct the 'Behind the Badge' seminar series to prevent officer suicides.



Detective Jim Grier



Detective Jim Young



Detective George Daniels



Officer Glenn Mitchell



Officer Matt Pearson



K-9 Officer Scott McInerney



Officer Matt Cullen



Detective Wayne Estes



Detective Joe Lengel



Katherine Fritsch and the Cary Police Department Honor Guard

Photos by Dean Smith and Erin Ray

RACE 4 THE FALLEN

The logo for the Glow Run event is displayed within a black square with a blue border. The words "Glow Run" are written in a large, stylized, cursive font. "Glow" is in pink, yellow, and green, while "Run" is in blue, pink, and yellow. Below "Run" is the hashtag "#R4TF" in white, bold, sans-serif font.

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



THE DAY THAT CHANGED MY LIFE

BY DAVID JAMES, GA TROOPER CHAPTER BOARD SECRETARY, PBAGA

Could one day change your life? Could everything change in an instant? Could the world you know suddenly be turned upside down? You bet it can, and I will tell you how my life changed in a matter of seconds.

In March of 1990, I was a young officer with the Richmond County Sheriff's Department and was shot in the line of duty. It is hard to believe that it has been 25 years. I say this with excitement because someone else could be writing about the shooting now instead of me.

I remember the date perfectly. It was March 2, 1990, and I was working the 3:00 p.m. to 11:00 p.m. shift. At approximately 5:30 p.m., I received a call in reference to trouble with a subject.

Upon my arrival, I spoke with a female complainant who told me that her son and another child had gotten off the school bus and were walking home through the neighborhood. She reported that two teenage boys driving through the area stopped and approached her son and the other child. The teens began to rough up the young boys and then reportedly produced a small semi-automatic pistol. As she was giving me more details, the vehicle made a U-turn at the intersection in the neighborhood. I told the complainant that I was going to follow them and speak with them in reference to the call. Moments later, I found the vehicle parked on the side of the street. One person was sitting in the driver's seat and the second person was on a front porch talking with someone. I exited my patrol car and instructed him to come to my patrol car, and told the driver to exit his vehicle. It was starting to rain, so I walked to my trunk to get my rain gear. This is the moment where everything went downhill.

The teenager that was on the



David James and his wife, Kellie, at the 2015 "Rock 4 the Cops" event in Augusta, GA

porch opened fire on me with a .25 caliber pistol. The first round struck my left eye causing me to lose sight from both eyes. This put me at a huge disadvantage, as all I could see was darkness. By the grace of God though, He sent me in the opposite direction of the shooter, and the next four shots struck me in the back. I crawled to a neighbor's yard across the street. The first officer arrived on scene soon after. He held my head in his lap, and all I remember saying to him was, "Don't you let me die. Don't you let me die." I lost my left eye (making it impossible for me to drive again) that day.



David James' patrol car at the scene of the shooting

Following the shooting, I began rehab, but was not able to fully recover to return to the streets. I returned to work in October of 1990 and was assigned as an assistant to the Quartermaster. In November 1990, I had to have one more surgery before I could return to light duty. I was re-assigned to the training center in January of 1991. At that point, I became an instructor with the Sheriff's Department. After a year at the training center, I started attaining certifications as a General Instructor, Firearms and EVOC. I have always been very passionate about teaching in law enforcement.

In 1992, I took on the task of learning how to drive with the BITA System. BITA stands for Bi-level Telemicroscopic Apparatus. The BITA system features a miniature telescope that is

placed in the lens of a person's glasses. The system creates simulvision so that the person can see a magnified field of view. It is like looking through a riflescope, but much smaller. That same year, my kidney function began failing, and I had to start on dialysis. I needed a kidney transplant and as any mother would do for their child, mine wanted to be a donor. After going through all the testing, she was a match, and I had my first kidney transplant in 1993.

The late 1990s were a very rocky time for me. At first, I was attending church in search of an explanation for what happened to me in the shooting. I was not able to do the things I was used to doing. I started drinking heavily to get rid of the pain of not being able to be back on the streets, driving, playing softball with the guys, and just normal stuff. There were days I'm not sure how I was able to make it to work. As I said, I was assigned to the training center under Captain Ray Myers. He was not just my supervisor, but also a dear friend. Since I could not drive he would pick me up every



The neighboring house where David James crawled to escape the shooter

morning and take me to work. Ray never considered me as a handicap. His motto was, "Never give up. Everything will work out in the end." His words kept me going.

In 2007, my second kidney began to fail and I needed another transplant. My family members and fellow officers were tested to see if they were possible matches for a transplant. Officer Tommy Tallent and my best friend Tim Heath made it through the first part of the test process but did not pass the second test due to some tissue typing issues. So, I was back to square one.

At the end of February of 2007, we were doing our annual firearms qualification night. Before we started with the training, rookie Officer Mark Sikes approached me and expressed interest in donating one of his kidneys. It was a very noble gesture. Especially considering the fact that we were simple acquaintances. I trained him when he was in the Academy, but other than that, did not know him very well.

I did not think anything of it because my wife, Kellie, and I were already looking at different options since none of my close friends or family were exact donor matches. We began to look at pair donors. This meant if the donor list was able to find a match for me, and Kellie was a match for the other person needing a kidney, we would swap kidneys. It was a long shot, but a shot we were willing to take. A month went by and there was still no match. I was running out of time.

On the morning of March 22, 2007, I received a phone call that I needed to report

immediately to the transplant office. I arrived at the Medical College of Georgia around 8:30 a.m. and was told that they had a kidney for me. The medical staff began prepping me for surgery, and I had the transplant at midnight. I was told the next morning that I

had received Officer Mark Sikes' kidney. Three days earlier, Mark (who had offered me a kidney only a month earlier) had an accident in his patrol car while responding to a call. He had to be airlifted to the hospital. Unfortunately, he did not survive due to his injuries. His family asked that I receive his kidney because they knew it was Mark's wishes. I was and still am completely taken back by the whole situation. It was a lot to take in.

Now I travel and speak at Post Critical Incident Seminars through the Police Benevolent Foundation. I always share my story with law enforcement officers in hopes that they will realize the importance of safety. I have no qualms about how I put myself in danger by not wearing my protective vest. In the early 1990s, protective vests were optional and I chose not to wear one. Many times we get complacent in law enforcement and we forget our training. So please always remember officer safety and 360.

I would like to thank everyone with the Richmond County Sheriff's Office. They have truly been there in my time of need. My family has made sure that I keep a strong will, never give up and assure that everything will turn out well in the end. My wife and children have been my crutch when I needed them. And above all, God.

A Bible verse that I have leaned on in troubling times is Romans 8:28, "And we know that all things work together for good, to them that love God, to them who are called according to his purpose."

I have written this article in honor of all

law enforcement officers and in memory of our fallen brothers and sisters, and the Sikes family - who made the decision to give me the quality of life. And to my brother, Mark Sikes, who made the ultimate sacrifice. So many times over the past eight years I have struggled with getting Mark's kidney. I feel that Mark and his family were cheated by not being able to enjoy life together, even though it meant I would have a better quality of life. Every year I attend National Police Week in Washington, DC. Mark's family attends and I always sit with them. That way it feels as though Mark is still sitting next to them.

Thank you for taking the time to read my story, and feel free to contact me at the Richmond County Sheriff's Office at (706) 821-1743. ■

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TO 85944**

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THREE PBA MEMBERS RECEIVE LIFE MEMBERSHIP HONOR

BY KAYLAN STOREY, PUBLIC RELATIONS COORDINATOR, SSPBA

The 2015 Southern States PBA annual board meeting was held on June 5, 2015, in McDonough, GA. During the board meeting, three members were awarded life memberships.

Life memberships are a rare and high honor. They are reserved for those members who have earned the respect and admiration of the association and its members. There are just over 30 life members to date.

The life members were chosen and nominated by their respective division presidents. This year's nominees include representatives from Alabama and Tennessee. The honorees are Norman Rickman from Tennessee and Joe Benson and Dennis Hill from Alabama. All three members' nominations were approved at their respective division meetings or by mail ballot prior to the annual SSPBA board meeting.

Each member has a long and well-respected history with the PBA. One has been shot twice in the line of duty, another has been heavily involved with political affairs, and the other helped form the first State Law Enforcement Chapter in his state. All remain committed and dedicated to the PBA and helping advocate fair and equal treatment of law enforcement officers.

NORMAN RICKMAN - TENNESSEE PBA



Norman Rickman has had a lengthy and eventful career, to say the least. He has been shot twice in the line of duty, once in 2001 and again in 2008. He has been at the center of media attention, yet he's still very modest and down to earth.

He and his wife have four children and one grandson. Rickman served 20 years at the Knoxville City Police Department. His hobbies include motorcycle riding and fishing.

When asked why he became a police officer, he replied, "It was just something I always wanted to do." And he did. He worked for the Knoxville City Police Department until he was injured from his second on-duty shooting.

Rickman joined the PBA in the early 1990s, when the association came into Knoxville, Tenn. "The PBA was up and coming at the time and the legal benefits were great; such as having an attorney on call," Rickman said. He later served as Knox County Chapter president from 2002 through 2006.

His law enforcement career has been far from boring. In 2001, he pulled over a motorist for a faulty brake light. During the stop, the motorist shot Rickman. The bullet hit him in the upper left chest, directly above his badge. He was only out of work for a short time before he was back on the streets. Then in May of 2008, he responded to a silent alarm call. Three suspects ambushed him as they attempted to flee. He was shot three times, first in the shoulder. This shot brought him to the ground. The next shots were delivered execution-style as the shooter stood over him and fired off two more rounds into Rickman's upper back. Thankfully, Rickman was conscious enough to hit the emergency button on his radio. Help arrived quickly, and he was transported to a nearby hospital. Several days later and minus a spleen, Rickman was released from the hospital. He recovered, but he was forced to retire due to his injuries.

The 2008 shooting and trial garnered much media attention. One reporter that remembers the events vividly was the *Knoxville News Sentinel* Writer, Jamie Satterfield. "I always had great respect

for him (Norman). The day the shooter was being sentenced, Norman gave an impact statement in court. The suspect was being very rude and unruly. He clearly showed no remorse for what he'd done to Norman. While many officers (and people) would have gotten angry and smarted back at the suspect, Norman was dignified. Norman said that he hoped the gunman would avail himself for what he'd done. You rarely see that dignity from anyone," said Satterfield.

Rickman has been actively involved in supporting the PBA for many years. When asked what being nominated and becoming a life member means to him, Rickman replied, "It means a lot being a life member. I put a lot of time into the PBA. The PBA is there to help its members. They help people with lawsuits – pension, trouble at work, grievances, etc. Overall, it's a great benefit for its members. It's a great organization and I'm proud to be a member."

Tennessee Division President Johnny Bohanan thinks very highly of Norman Rickman. As Bohanan says, "He is a very good friend and big supporter of the PBA." Bohanan went on to say, "He's a man that I'm proud to call my friend." Rickman is also a role model in Bohanan's eyes. "He is absolutely a role model. He was a great police officer. He went above and beyond with the chapter, and he was always there for the members," Bohanan said.

JOE BENSON - ALABAMA PBA



Mobile, Al. resident Joe Benson received a life membership for his years of service with the PBA. His passion lies in political affairs where he works to ensure law enforcement officers are being given equal rights. He and his wife have two sons ages 35 and 28. His hobbies include

collecting baseball cards and coins.

"I became a police officer to help people," Benson said. "And to do something you feel good about," he added. Every officer can relate to that passion and feeling of doing something to help others.

Benson was with the Mobile Police Department for 32 years before he retired in 2009 with the rank of sergeant. He currently serves as the president of the Mobile County Chapter with the PBA. He has been a proud member of the PBA for 18 years.

When asked why he decided to join the PBA, he replied, "For the legal benefits, legal representation and the death benefits. I also like how PBA works to defend police officers' rights." During Benson's 18 years with the PBA, he has been very active in political affairs. As a member of the public affairs committee, Benson has

a hand in screening and endorsing political candidates for election. He also works to ensure the candidates work to improve law enforcement rights. His work with political affairs is his favorite thing about the PBA. "I enjoy seeing politicians working to defend the officers' lives and benefits," Benson said.

In addition to being named a life member, Benson also won ALPBA Member of the Year in 2006. "It's a great honor and I'm humbled by the nomination," Benson said when asked about his life membership.

ALPBA President, Donald Scott appreciates Benson's continued commitment to the PBA. "He was chosen because of his long-standing history with the PBA. A lot of the younger officers today don't believe in the core principles. Most younger officers don't want to get involved as much with the PBA (unlike Benson)," Scott said.

DENNIS HILL - ALABAMA PBA

Dennis Hill has been a PBA member for 24 years. He also started the first PBA State Law Enforcement Chapter in Alabama. He has four children, including a set of triplets. His hobbies include gardening, horseback riding, reading and traveling. When asked for one fun fact about him, Hill replied, "I can always find something to get into."

Hill worked with the Alabama Alcoholic Beverage Control Board for 20 years as the Lieutenant District Supervisor before retiring in 2011. He worked to ensure that alcoholic beverages were marketed smartly and ended up in the right hands. The Alcoholic Beverage Control Board works to manage alcoholic beverages through distribution and enforcement. During Hill's time with the Alabama Alcoholic Beverage Control Board, he made an impact with his supervisors and co-workers.

One person that remembers Hill's personality and dedication is Jeff Rogers. Rogers is currently the Director of Law Enforcement for the Control Board. "Dennis was a great friend and a lot of fun. He would always crack a joke," Rogers said. "He (Hill) was a big man

and he loved to eat. We would work out together (both trying to lose weight), and after we'd work out at the gym, he'd say, 'Where are we going to eat?'" Rogers added. When asked if there was one thing he would want people to know about Dennis Hill, Rogers replied, "He is a good person and a good friend."

Hill joined the PBA in 1991 because PBA was the voice for law enforcement. "At the time, I saw things happening in government, and law enforcement didn't really have a voice to represent them. I knew PBA would be that voice," Hill said. "The most rewarding thing about being a member of the PBA includes being able to get involved in the legislative process," Hill said. As a PBA member, Hill has stayed involved in political affairs. The life membership honor allows him the flexibility to remain involved in politics and public affairs. In addition to his recent life membership award, he was also named Alabama PBA Member of the Year in 2009.

Alabama Division President Donald Scott says one thing in particular stands out about Dennis Hill. "Loyalty. He remains committed to the PBA," Scott said. When



asked what his favorite thing about the PBA is, Hill answered, "They never lie to you. They tell you straight up if they can help. They don't beat around the bush."

Being nominated and becoming a PBA life member means a great deal to Dennis Hill. "It's one of the greatest honors I've had bestowed upon me. It's overwhelming. I've never had anyone do what PBA does for me. They do what they say," Hill said. ■

PBA MEMBER ACQUITTED AFTER ON-DUTY FATALITY ACCIDENT

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

Portsmouth (Va.) police officer and PBA member William Watts was acquitted in April after being charged with one count of reckless driving in connection with a 2014 vehicle accident in which a pedestrian was killed. PBA attorney Ali Sprinkle represented Officer Watts.

“The decedent darted out in front of him,” said Circuit Judge John Daffron, Jr., who heard the case. The judge also said that video evidence did not support a lesser charge of improper driving.

Attorney Sprinkle pointed out that Officer Watts was not using his cellphone or his in-car computer while he was patrolling the area at the time of the accident. “There is no distraction. There is no erratic driving,” she said.

Officer Watts took the stand in his own defense and said that he was looking to his right shortly before the collision and

did not notice the pedestrian crossing the street from his left. “I never saw the victim whatsoever,” he said, explaining that he had been checking out a shopping center that was generally regarded as a high crime area. “That’s why I didn’t hit my brakes.”

The time of the accident was approximately 9:00 p.m. There was no crosswalk and little lighting at the location of the collision. As soon as it occurred, Officer Watts immediately stopped and attempted to render aid. He also called medics and backup.

Southeast Virginia PBA Chapter President Bill Baker contacted attorney Sprinkle directly shortly after the accident took place and coordinated all communications through SSPBA staff. Sprinkle responded to headquarters and spoke with Officer Watts that night. She was present with him during his statements to investigators and represented him throughout

the 11 months leading up to and including the trial in circuit court.

Attorney Sprinkle stated, “Having representation from the beginning of an incident and prior to making any statements is crucial.”

Officer Watts has seen for himself how important PBA legal coverage is. “Every new police officer who I have trained since this incident has not started field training without legal representation,” he said. “I stress this point and share my situation when I train any new officers. I also stress to them that even when you have done nothing wrong, you can still be charged, like in my case, and for the small price of a membership, you can have peace of mind, which in our line of work is priceless.”

Portions of this article were previously reported in the The Virginian-Pilot.

ATTORNEY SPOTLIGHT: MALEA DREW



Attorney Malea Drew of Fayetteville, North Carolina has represented SSPBA members since 2013. Drew has quickly become a reliable PBA attorney in her area, working on 26 cases in two years. She has handled critical incidents, employment matters, and certifications with professionalism and empathy for PBA members.

Drew’s background includes training law enforcement officers for many years. She wrote the mandatory training curriculum when she worked for the North Carolina Department of Justice with the North Carolina Justice Academy. Currently, she owns her own practice where she is working to focus her practice solely on law enforcement.

Drew started with the PBA by expressing interest in helping the members. She was always aware of the PBA and encouraged officers to join. “I told them the PBA was a great use of their money, and it’s not a matter of if they’ll get sued, but when,” Drew said. “I knew the PBA was a really good idea. Then I reached out to the PBA when I opened my own practice. I told them about my background and that I was here to help if a member needed me. I got my first call about a week later,” Drew added.

When asked what her favorite aspect of the PBA was, Drew replied, “Responding to critical incidents. I enjoy being able to go out there and help at the scenes. They

call me the ‘cop whisperer’ because I can always calm the officers down. I know how to speak their language. I enjoy being able to assist law enforcement officers in the most stressful situations of their lives.” Being chosen for an attorney spotlight is a high honor for Malea Drew. “The work that I do for the PBA members is the most important part of my practice. It’s very meaningful to me,” Drew said.

Southern States PBA Director of Organizational Services – East Region Beth Dyke appreciates Malea Drew’s dedication to the PBA and its members. “I remember one night we received a call from a member that needed assistance. I called Malea (not knowing it was her wedding day), and she answered! She was still worried about the member and wanted to help,” Dyke said. “Malea really stands out. She always answers the call and tries to help the members,” Dyke added.

Malea Drew’s Law Office is located at 214 Dick Street, Fayetteville, NC 28301. She may also be reached by phone at (910) 494-4055.

MADDIE AND TAE HEADLINE “ROCK 4 THE COPS” BENEFIT CONCERT

BY KAYLAN STOREY, PUBLIC RELATIONS COORDINATOR, SSPBA

January of 2015 saw one of the Police Benevolent Foundation’s most successful events yet. The CSRA Chapter of the Police Benevolent Association of Georgia and the Foundation hosted a benefit concert featuring the acclaimed country music artists Maddie and Tae.

Proceeds from the event benefitted the Georgia Post Critical Incident Seminar (PCIS) program. The seminars are held to help officers dealing with the trauma that comes with the job. That may include dealing with having to shoot a suspect in the line of duty, being shot, experiencing the loss of a co-worker or partner, or working a traumatic scene.

There were approximately 1,000 people in attendance, and the event raised over \$25,000. That is enough money to cover a whole year of seminars.

One of the main people responsible for the creation and success of the event was CSRA Chapter President Patrick Cullinan. This event and the PCIS program mean a great deal to Patrick. “The success

of Rock 4 the Cops was very personal to me and other members of the CSRA Chapter, seeing as 100% of the proceeds benefited the Georgia Post Critical Incident Seminar (PCIS), which several of us have attended in the past,” Cullinan said.

Cullinan went on to talk about why the benefit was so crucial to supporting the PCIS program. “Unfortunately, in the law enforcement profession, a major obstacle that impedes the maintenance

of psychological health is the stigma attached to asking for help. In 2013, I attended the first Georgia Post Critical Incident Seminar, which was held in Augusta, Ga. I found this to be the most amazing and rewarding training that I had ever been involved in. Peer support is an important element of the PCIS program. Discussion of incidents with fellow officers who have ‘been there’ promotes normalization and recovery. PCIS provides education on trauma, patterns of resolution, and field-tested coping strategies to promote recovery and resilience,” Cullinan said.

The community was a huge help as they stepped up with sponsorship and support. The benefit concert was held at The Country Club Dance Hall and Saloon, which donated the venue and a portion of all alcohol sales. Sponsors included several local media outlets and businesses. In radio, KICKS 99 stepped up to support the event. In TV, WAGT NBC 26 was a great promotion partner. Phoenix Printing handled the printing. Rob Ashe managed billboards for the event. The PotashCorp, Executive Marketing, Gerald Jones Auto, Element Funding, Augusta Mall, and Augusta Pet Crematory were just a few of the sponsors who helped make the benefit concert such a success.



Maddie and Tae posed with some of PBA's finest



Maddie and Tae performing for the sold out crowd

FEARING FIDO: RECENT TRENDS INVOLVING FIRST RESPONDERS, MAN'S BEST FRIEND, AND DAMAGES

BY MICHAEL S. CARR & ARTHUR H. CALDERÓN, GRIFFITH & CARR ATTORNEYS

They are man's best friend. A constant companion, and always loyal, the family dog holds a special place in each family. But what happens when the family pet is too loyal or poorly trained, and a police officer encounters that dog? To a family, Fido could be a lovable, completely peaceful family member; but to a police officer, Fido could be violent, and pose a serious threat to the officer's safety.



Attorney Michael S. Carr (left) with Associate Arthur H. Calderon (right)

Lately, this issue is one of the hottest topics in the nation involving law enforcement. As recently as June 25, *The Washington Post* released an article describing two incidents of what it calls "cops unnecessarily shooting at dogs." In one incident, here in our hometown of Cleveland, Mississippi, an officer, while responding to reports of a prowler, encountered a year-old Labrador that was tied to leash. The officer shot and killed the dog, citing self-defense. He was placed on administrative leave pending investigation. In another incident in Columbus, Ohio, an officer accidentally shot a 4-year old girl while firing at a charging dog. Both incidents involved police officers making a split-second decisions where they had to consider their own personal safety.

Courts across the nation are struggling with this situation. Universally, courts recognize that officers may exercise force, even deadly force, to protect themselves from man's best friend. But another problem arises: when an officer and his department are found responsible for a dog's death, how much can the owners collect in damages? Put another way, how much is Fido worth?

When a person is killed, the responsible party can be awarded money damages for many claims, including wrongful death, various forms of emotional distress, loss

of companionship, and future wages - to name a few. Even though dogs may hold a special place in a family, traditionally courts have viewed pets less as companions and more as living property. However, a growing number of courts are determining that the family pet is more than just property. In some cases, families of shot dogs have collected substantial damage awards in civil litigation. The potential for this type of award, in turn, should give officers something to think about when they encounter a family pet, especially if there is a chance that the officer may injure or kill that pet.

The common measure of damages for an injured family pet is the cost of treatment. In those situations, a court will typically award the cost of "reasonable" treatment. Those costs will include veterinary bills and medications, but not the cost of time taken off of work for an owner to take care of a dog or emotional damages an owner may suffer due to their dog's injury and recovery. However, when an animal is killed by law enforcement, courts may award substantially more to the owners for the loss of their property.

When a dog is killed by a police officer, courts traditionally award the market or replacement value of the dog. Courts look to a variety of factors, such as the purchase price of the dog, age, health, breed, training, and special traits to

determine what a suitable award should be - the same analysis a court would undertake in any situation involving a "taking" or lost or damaged property. What makes things problematic, though, is when a plaintiff asks for additional damages beyond the market value, such as sentimental value, emotional distress, or punitive damages.

Some states have established a category of sentimental damages

regarding a dog's value to its

owner. Tennessee, for example, allows pet owners to recover up to \$5,000 for the loss of a pet's "society, companionship, love, and affection." The problem with this form of compensation is that there is a high probability that a court, and certainly a jury, will award sentimental damages - particularly if an owner lives alone, is unusually attached to the dog, or if the family has children. So this raises the question: is the family pet considered "quasi human"? Is it more than just lost property? Has a new category of property been created?

The growing trend is that most owners are in fact suing for emotional distress caused by their dogs' deaths. But are emotional distress damages recoverable? Should they be? Courts are struggling to establish a correct standard to justify such an award. On one hand, courts have clearly established that dogs, though living, are property of their owners, while on the other hand, courts cannot overlook that dogs are part of the family unit. Most courts simply will not allow an award for emotional damages unless the officer's conduct is outrageous. Even, then, each day, more courts are beginning to side with pet owners.

Take, for example, the case of Brandi. Brandi was a Labrador retriever that lived with her family in Maryland. One day, when deputies came to serve one of the

family members with a warrant, Brandi approached one of the deputies to greet him. The deputies' dashboard camera showed that Brandi was neither barking nor charging the deputies, and when she got within three feet of a deputy, the deputy shot her. While Brandi did not die, her injuries required life-long medical care. After a trial and appeal, the Maryland Court of Appeals awarded Brandi's family \$200,000.00. Other cases have led to similar outcomes.

Taken a step further, are punitive damages appropriate? Punitive damages are awarded when someone has acted intentionally or with extreme recklessness or malice. In those situations, while many states do not allow damages against a government agency if an officer is found to be acting outside the course and scope of his/her

employment, it still allows individual police officers to be found liable and subject to monetary damages. Such amounts can vary widely, depending largely on the nature of the underlying conduct, as well as the mindset of the judge and jury.

This naturally raises a question for police officers' minds: What can officers do to avoid liability? One suggestion is to have training specific to family pets. Proactive training on warnings signs and indicators of violent (as opposed to protective) pets can go a long way towards protecting officers from potential suits, and pets from injuries. This training needs to be incorporated into written policy of the department. Another suggestion is to communicate with citizens during investigations to determine who may own

a pet, the pet's propensity/disposition, and advise them to secure their pets in a place while officers are on scene.

Regardless, officers should be very mindful when confronting family pets, particularly given the national attention on the subject. While a majority of courts may still be reluctant to award a high-dollar figure to owners, officers should be aware that that majority is beginning to dwindle.

Griffith & Carr concentrates on government sector defense, and represents law enforcement and first responders in almost all types of legal disputes. Its office is located at 123 South Court St., Cleveland, Mississippi 38732. More information about the firm can be found at www.griffithcarr.com. ■

WAYS TO AVOID SELF-INFLICTED DAMAGE TO A PBA MEMBER'S LEGAL CASE

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



When PBA assigns a member's case to an attorney, it is our hope and expectation that the member will obtain the best possible result. After all, we have reviewed the matter for coverage and have assigned it to a capable attorney who has proven to be supportive of law enforcement. It has become apparent to us, however, that members sometimes make decisions that could harm their chances. Some of those avoidable actions are listed below.

- Communicating with the PBA attorney via departmental email or fax: It is critical that members realize that they have no expectation of privacy in their communications through departmental property. An email sent through a work email address can be accessed at any time by the employer. Paperwork left on a departmental fax machine can be seen by any departmental employee who may be walking by. Not only do such actions over departmental equipment likely violate policy, they could reveal information regarding evidence or strategy that could give the department an advantage in its case against a member.

- Failing to communicate with the assigned PBA attorney: The attorney assigned to represent a PBA member bases his or her efforts on facts and information as known to the attorney. Occasionally, however, members make key decisions without informing their attorneys, and this can lead to significant shifts in the attorney's position in advocating for the member. For example, if an attorney is preparing for an appeal of a disciplinary action and learns from the departmental attorney that the member has obtained disability retirement, this greatly weakens the PBA attorney's position in trying to

obtain any relief in regard to the disciplinary appeal. Likewise, if a member resigns from his or her department while a disciplinary matter is pending, this greatly undermines any efforts the attorney may be pursuing to obtain a clean exit from the department for the member.

- Posting on social media: It has become commonplace for people to vent and share information by way of social media. Doing so, however, can be devastating to a PBA member's case. Comments regarding a case the member may have against the department, such as a disciplinary appeal or a grievance, not only provide possible evidence to be used against the member, they almost certainly violate departmental policy and can lead to further problems for the member. As for members involved in critical incidents such as line of duty shootings, the media is certain to search for any information they can find on the involved member. Social media postings can cast the member in a negative light and give the attorney something else to defend. While these actions may seem harmless, they can create unnecessary problems. Avoiding these pitfalls will help a PBA member and his or her attorney build the strongest possible case

 ■

ATTORNEY SPOTLIGHT: ABIGAIL WALSH



Charleston, South Carolina attorney Abigail Walsh has represented SSPBA members for eight years. Walsh accepts any calls regarding members, but generally handles civil and criminal cases. She consistently handles cases efficiently and in a professional manner to assist members.

Walsh obtained her law degree from Washington and Lee School of Law in Lexington, Virginia in 2003. In 2006, Abigail Walsh opened her own law firm and specialized in local, state and federal criminal cases. In 2010, she and attorney Lauren Williams founded the law firm of Williams & Walsh, LLC. Walsh currently specializes in personal injury, eminent domain, construction defect, and criminal litigation.

Walsh initially heard about the PBA from law enforcement officers in her area. She immediately contacted the PBA to volunteer her services to PBA members in need.

Abigail Walsh dedicates her time and services to PBA members because she knows how important it is that everyone in law enforcement receive excellent representation. "Anyone who is accused of criminal conduct or misconduct on the job immediately suffers from a social and professional stigma, regardless the accuracy of the allegations. Considering recent events across the country involving

criminal conduct and other misconduct by a small minority of law enforcement personnel, it is more important now than ever since a small minority has cast a dark shadow over law enforcement in general across the country," Walsh said. The PBA and attorneys like Abigail Walsh advocate for members in an effort to see that they receive fair treatment in each case.

When asked what being chosen for an attorney spotlight means to her, Walsh replied, "It's an honor. It's very nice to be chosen for your work." South Carolina Division President Dave Soderberg appreciates Abigail Walsh's commitment to the PBA members. "When we've needed her, she's been there for us," Soderberg said.

Abigail Walsh's Law Office is located at 125-A Wappoo Creek Drive, Charleston, SC 29412. She may also be reached by phone at (843) 722-0157. Visit the Williams & Walsh website at www.williamsandwalshlaw.com.

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3 CHALLENGES FOR POLICE OFFICERS IN A POST-FERGUSON WORLD

BY MIKE WOOD, POLICEONE.COM CONTRIBUTING WRITER



A May 2015 Wall Street Journal article discussed violent crime statistics in the post-Ferguson era and declared that we are seeing a new “national crime wave.” Whereas the first half of 2014 continued the 20-year national trend of decreasing violent and property crimes, the first half of 2015 saw a dramatic rise in criminal activity and violence, especially in major urban centers where shootings, homicides and other violent crimes are spiking.

Some mainstream media chooses to blame this dramatic increase entirely on cops who have chosen to disengage and police less aggressively, but there are other contributing factors. It would be too simplistic to blame these incidents — such as the 180 percent increase in Milwaukee homicides or the 500 percent increase in East Harlem shootings — on retreating cops while ignoring the economic, cultural, educational, and political factors that influence these trends.

Consider These Three Challenges

We must acknowledge, however, that the police do play a role in the reversing trend. In the current political climate, the trust between police officers and civil leaders has been damaged, and the bond between the police and the public has eroded, which has an inevitable effect on police behavior.

If you’ve found yourself doing the math and have determined that the personal and professional risks of aggressive policing

are unacceptable in the current political climate, you’re probably not alone. If you’ve determined that you will use your allowable discretion to limit your exposure to potentially volatile situations, you’re probably in good company with cops across the nation who feel they no longer have the support of their civic leaders or the public, and in some cases, are being targeted by them.

I’m not going to make a judgment on these personal decisions — they are yours to make. I will simply acknowledge that this is the crossroads we have come to in America, and it shouldn’t surprise anyone if some cops are no longer willing to stick their neck out when the crowd is standing by with guillotines at the ready. However, I am going to challenge you to do the following:

1. Don’t sacrifice good tactics for “good optics.”

With all the media attention and public scrutiny, it might be tempting to change tactics and soften your approach to some volatile situations to avoid becoming the next target of the cop-bashers. There’s nothing wrong with using a soft approach when it’s appropriate, but if the situation demands a more aggressive response, then don’t shy away from it.

Ironically, an early and aggressive response can improve a suspect’s safety, in addition to an officer’s safety, by preventing the situation from developing or escalating to the point that greater levels of force are required to regain control.

The media might celebrate an officer’s “restraint” in the face of obvious danger, but you should not be subjecting yourself and your partners to unnecessary risk just to avoid looking bad on film.

2. Don’t fall prey to “deadly hesitation.”

Avoiding unnecessary confrontations is one thing, but don’t get so caught up in avoiding all use of force that you hesitate to use it when necessary. When an attacker puts your safety or the safety of a fellow officer or citizen in jeopardy, you cannot hesitate.

If you delay your response too long — or respond with an insufficient level of force because you’re afraid of “excessive force” accusations — then you may endanger innocent lives. If a threat puts you in danger, you must respond swiftly, decisively and aggressively.

Stop the threat, win the fight, and worry about the aftermath later.

3. Remember your oath.

You swore an oath to serve and protect the public, and nothing about that has changed since Ferguson. Never forget that the vast majority of citizens still respect and support you, and are counting on you to help keep them safe.

It’s one thing to let your enthusiasm for aggressive police work wane in the face of unjust criticism and treatment, but it’s your duty and your obligation as a cop to protect the innocent, even if it comes at great personal risk. You don’t have to recklessly throw yourself into harm’s way or take foolish risks, but you must be ready to do your duty and must never shirk it. Not everyone can be a cop or assume a cop’s burden — that’s what makes you and this profession so special. ■

This article originally appeared on PoliceOne and is reprinted by permission.

TENNESSEE PBA HONORS LATE LONGTIME MEMBER

BY KAYLAN STOREY, PUBLIC RELATIONS COORDINATOR, SSPBA



Tim Taylor poses for the camera during the annual "Fishing with a Cop" event

The 2015 Tennessee PBA annual board meeting was held on May 9, 2015. During the board meeting, Tennessee Division President, Johnny Bohanan presented late PBA member Tim Taylor's widow, Brenda, with a commemorative plaque. The plaque was created in honor of Taylor's years of service and dedication to the PBA.

Tim Taylor joined the PBA in 2001 and served on the Upper Cumberland Chapter board as secretary. Taylor also worked for the Putnam County Sheriff's Office as a corrections sergeant.

Taylor was always a consummate supporter of the PBA, and he often encouraged other officers to join. Upper Cumberland Chapter President Jimmy Patterson is one person who met Tim early on in his career. "He was the one who first approached me about joining the PBA. Tim was instrumental in getting me to join the local chapter," Patterson said. "He was loyal to law enforcement and he advocated for the PBA," Patterson added.

In addition to his work as a corrections sergeant, Taylor was dedicated to his work with the PBA. He was involved in

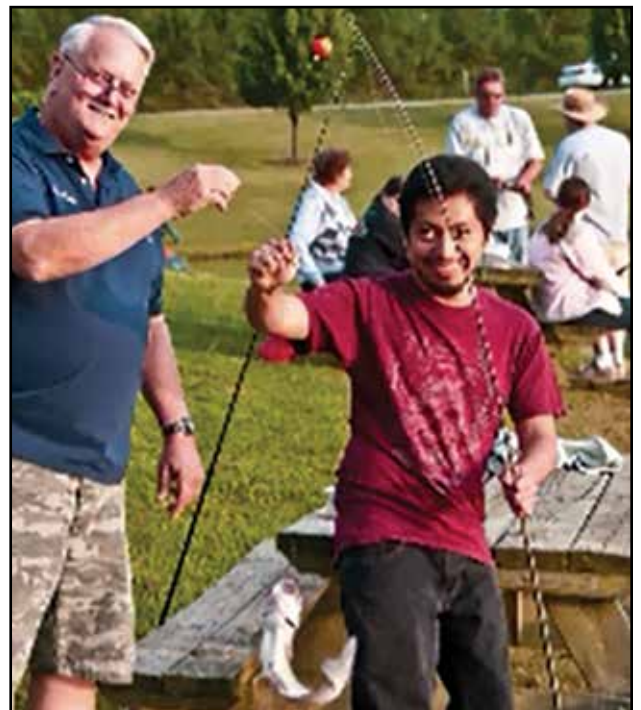
political action and advocated better pay scales for PBA members. Taylor also went into the community and met with community members to raise support for PBA endorsed candidates. His passion was for the PBA, and he constantly worked to advocate for law enforcement.

Taylor also had a special place in his heart for special needs children. He helped start the "Fishing with a Cop" event with the Structured Athletics for Challenged Children (SACC) organization in 2003. The SACC is a non-profit organization whose mission is to "enable children with physical and/or mental disabilities to enjoy the benefits of participating in an athletic environment structured to their abilities," according to SACC founder Kim Wise.

Taylor's enthusiasm and interest in helping the children meant a great deal to Wise. "Tim always worked hard to be sure we had the fishing poles needed for each participant! He also went above and beyond the fishing part and would always have a cookout for all our participants and their families! For many years he worked very hard to make sure the event was successful," Wise said.

In January 2014, he was diagnosed with leukemia. He fought and beat the disease twice. Unfortunately, it returned a third time, and Taylor passed away in December of 2014.

Tim Taylor had a big heart, and he used it to help other officers and community members. He touched many lives and made positive impressions on those around him. Taylor was a good friend of Jimmy Patterson. "If there's one thing that I want people to know about Tim, it would be that he was loyal. You never had to question whether he would be there for you or not. He always had your back," Patterson said. 🐾



Tim Taylor and an event participant proudly showcase their catch

ALABAMA PBA CHAPTERS HOST TRAINING EVENTS

BY JON RILEY, ALABAMA DIVISION SECRETARY, ALPBA

On June 26, 2015, Alabama PBA State Law Enforcement Chapter teamed up with Wiregrass Chapter to host a one day training event at Holiday Inn in Dothan, Alabama. The class was attended by several officers from the Wiregrass area as well as officers from around the state. About fifty officers from state, county, and local agencies attended the training. The class focused on several aspects of officer safety, including many points from the Below 100 Initiative.

Chapter President Gary Cooper taught the class and did a good job engaging the participants in discussion throughout the day. The officers in attendance responded in kind by participating in the class and giving some really good feedback. I can honestly say the level of participation from the officers made this class even better than we anticipated.

A huge thanks to State Law Enforcement Chapter Senior Vice President Jim Carney and board member Chris Regular for their hard work in facilitating this class and Wiregrass Chapter President Brock Cody Sr., Senior Vice President Tim Goad, and board member Ladon Joyner for getting the word out to chapter members about

the class. Thanks to the officers who attended and actively participated as well.

The State Law Enforcement Chapter also sponsored an officer involved shooting class in Oxford, Alabama on September 24, 2015. The class was taught by Tim Rutledge. Rutledge is the Director of Training at Regional Counter-Drug Training Academy in Meridian, Mississippi. This is truly an exceptional class that every law enforcement officer should attend. I can't imagine even the most seasoned officer not gleaning valuable information from this presentation.

The class focused on two main points. First, the psychological response of a law enforcement officer after he or she has been involved in an on-duty shooting. This point also covers how fellow officers, supervisors, and command staff should respond, as well as common mistakes in critical incident response that should be anticipated and avoided.

Second, Rutledge calls for introspection on the part of the individual officer. You might liken this point to a different type of officer safety class. Not the one that teaches officers to "always watch the

suspect's hands" or "how to use cover and concealment properly." Rather, it is another type of survival - a psychological survival. In short, officers are reminded of the importance of staying healthy in both the physical and the psychological sense, and how proper health and psychology are comingled for true health and fitness. I don't know of a profession anywhere that doesn't have its own perks as well as pit-falls. Law enforcement is certainly no exception. Rutledge gently guided the students into a self-examination of both good and bad habits and how to make improvements or changes in his or her day-to-day life, both off and on-duty.

If this class is taught anywhere close to you, I highly recommend attending.

I would like to thank Tim Rutledge and R.C.T.A. for teaching this class and Chief Bill Partridge and Officer Frank Mayo from Oxford Police Department for securing the Oxford Civic Center for this class. Thanks also to chapter board members Jim Carney, Mike Leberman, and Alicia Cash for your contributions to make this class a success. ■

5K GLOW RUN IN MCDONOUGH, GA SETS GLOWING ATTENDANCE RECORD

BY KAYLAN STOREY, PUBLIC RELATIONS COORDINATOR, SSPBA

The annual McDonough, GA Race for the Fallen 5K Glow Run took place Saturday, September 19, 2015. The race welcomed over 600 runners and was the most successful race to date. Law enforcement officers, office co-workers and families of all sizes took part in the fun. Many groups even had special shirts made to show their team solidarity. Every participant was given a pack of glow gear and neon t-shirt to wear during the race. The crowd was definitely large and glowing in more ways than one!

The atmosphere was lively and family-oriented. Participants ranged in age from 5 years old and up. Many sponsors donated product or were on hand to assist event participants.

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 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.

In 2016, the Race for the Fallen Glow Run will be held in North Carolina, Georgia and Tennessee. For more information about the race, including upcoming locations, visit: www.raceforthefallen.com. ■

THE ALEXANDRIA CHAPTER DEALS WITH PAY INEQUITY ISSUES

BY DIANA E. BARRETT, ALEXANDRIA CHAPTER PRESIDENT, VAPBA

A lot can happen in 10 years. Officers come and go – retirements, promotions, changes in police chiefs. But for the last 10 years, the pay scale for the officers of the Alexandria Police Department, has stayed the same. The last time any kind of adjustment was made, I had just been sworn in as a new recruit officer. I remember being told during local training that city council had just approved a raise for the department and that we would see it in our next check. This was January of 2006.

Our department has long been the lowest paid police department in the Northern Virginia area by a significant amount. The city hired contractors to do pay comparison studies, but nothing ever seemed to come of it. There was a time in the 1990s that officers showed up en masse at City Hall and collectively turned in their pagers in protest of the low salaries (and other issues).

Over the years, labor heads had taken out costly newspaper advertisements, begged and pleaded with city council members and the mayor all to no avail. When the recession hit a few years ago, this got worse. No more cost of living increases and our normal step increases (on our complicated pay scale) were frozen, much like most of yours, I'm sure.

The biggest issue in the last 10 years that we faced, due to our low paying salaries, was retention and recruitment of officers. Our department used to have two testing dates a year and we could pack in hundreds – filling up around fifteen spots at the Northern Criminal Justice Academy. We were now offering multiple tests a month and could barely get twenty people a day just to take the test. Our department was 9% behind the market average and 12.3% behind the market leader, Fairfax County (who we share a significant part of our city's border). We were also encountering significant issues with "leap frogging" and compression issues within our pay scale across all of the ranks. Since 2012, our department lost 25 officers. After speaking with out-going



Alexandria Chapter President Diana E. Barrett

officers, we knew that close to 50% of those left because they were going to departments that were offering better pay.

Fast forward to July 2014 and I am elected as president of the Alexandria Chapter. I have no idea what I've gotten myself into and am thrust in to meetings with commanders and city officials as part of a "Public Safety Work Group" that has been created to look at the salary and pay inequities. In most of these meetings I kept quiet because they had been going on for quite a while and I really had no idea what was going on. Also in this group is the head of a second labor organization that sworn members of this department can belong to. We started talking and he began to fill me in on what had been happening in these meetings. We decided that we were going to spearhead a movement and what almost felt like a last ditch effort to plead our case for a raise in both the starting salaries and across the board for all employees.

After a few more group sessions, a thick PowerPoint was created with all the numbers and graphs and bullet points to get our information out. But we needed to get both of our memberships behind us and try to get as many people to hear what was going on. As I soon found out, it can be difficult to get our members to show up to meetings! Pizza... and lots of it, that'll do the trick. We held joint meetings, covered all sides and shifts, asked sergeants to have roll call after our meetings and offered FREE pizza and soda. We still didn't get as many as we thought, but each meeting seemed to grow. I asked for ideas from our members – what do you think would be the best way to get our information out to the public? Crickets. The idea of the newspaper ad was brought up. I had no idea how much a newspaper advertisement was... then I started thinking about how many people actually read a hard newspaper these days? Probably not many. The next thought that came to mind was social media. As most in law enforcement probably think, social media can either be the devil or a God-send.

Along with creating a social media campaign, we also decided that we would have our bullet points turned into flyers. A local printing company volunteered its services to us and gave us boxes of our flyers, and we had shirts made. We then set up our "door to door" campaign and had members sign up to walk the streets in the cold months of January and February, literally knocking on doors and handing out our flyers. As expected, the first day was slow and we didn't have too many people show up. To be honest, the dates were almost cancelled. We started to spread the word that if more people didn't promise to show, the entire campaign would be shut down. We had been meeting individually with council members, the city manager and the mayor on behalf of the memberships and could not continue without their help. When our first day of the door to door came, we supplied everyone with the normal cop breakfast of hot coffee and donuts. We had laminated maps and assigned our



crew particular streets, gave them rules on what to say and how to present themselves and to check in with us often. They were given packets and told to hand out all of their flyers. To our surprise, when we all met back at the end of the afternoon – our members were invigorated. They had never heard such great things from citizens, when they told them about our issues. The common theme from our citizens was, “I didn’t know.” Our numbers grew on the second, third and fourth days. Members were finishing their neighborhoods and wanting to race back to the meeting point to get more flyers and find a new area to go visit!

I spoke at a city council open hearing and explained to our council what we had accomplished in so little time. We packed council’s chambers with our members in uniform. I explained that we had over 1,000 signatures on our petition and had knocked on hundreds of doors of their constituents, who all agreed that something needed to change and that they didn’t want to see their officers continuing to leave for other departments.

When the Fiscal Year 2016 budget was passed, our new city manager implemented the changes we asked for. He and the council saw how much of a problem our pay inequities were, how vocal we could be, and how much the citizens of our city

cared for us. They are also continuing to work with us to make sure we do not fall so far behind again. We know that our department will never be a leader in pay for this area – but we certainly don’t want to be as far down the ladder as we were.

To make a long story even longer, the message here is that, as we all know, the squeaky wheel gets the grease. Times have changed and so must our methods in trying to get change. Also, we’re still hiring – with a nicer starting salary than before.

A FEW WORDS OF ADVICE

Virginia Division Executive Director Sean McGowan offers a few words of advice for other chapters and officers considering taking their message to the public.

“Alexandria law enforcement professionals have a long history of activism, which I personally witnessed when I took my oath of office as an Alexandria police officer in 1984. Membership in labor organizations in Alexandria has always been nearly 100%, giving the officers a strong voice. Statistics showed that for every officer vote for a candidate, 25 voters will be influenced by that officer, and vote the same way.

Also making activism possible is law that was enacted in 1978, called the Law Enforcement Officers Procedural Guarantee Act (9.1-500 through 9.1-507). Virginia took steps years ago to give minimal job rights protection to certain law enforcement officers. Law enforcement officers in Virginia, excluding deputy sheriffs, are not ‘at will’ employees, meaning they cannot be fired without cause.

The Alexandria Chapter and President Barrett were able to take the action necessary for change through member involvement and social media because of the added protections they have under the Act. Officers in other states are advised to be very familiar with state laws and departmental policies regarding political involvement. PBA staff can offer great insight into the activities that may be successful in each state.

Political screenings, candidate endorsement, chapter involvement and social media can have a huge impact on the fight to improve your work life. The greatest of care must be utilized when employing these activities so members’ jobs and careers are not jeopardized. Be active and smart, and stay in constant contact with the PBA legal department and staff as you navigate the political battlefield that lies ahead of any fight for pay and benefits.”

CHIEF JUSTICE MARK MARTIN ANNOUNCES FULL MEMBERSHIP OF STUDY COMMISSION

NORTH CAROLINA DIVISION PRESIDENT RECEIVES APPOINTMENT

BY TIM REICHERT, DIRECTOR OF COMMUNICATIONS AND PUBLIC AFFAIRS, SSPBA



North Carolina Division President Randy Byrd (left) with Chief Justice Mark Martin (right)

Chief Justice Mark Martin has announced the full membership of the newly created North Carolina Commission on the Administration of Law and Justice and has appointed North Carolina Police Benevolent Association President Randy Byrd to the commission. The commission membership is comprised of key stakeholders within the justice system as well as leaders in the private and public sectors. The multidisciplinary commission will undertake a

comprehensive evaluation of our state's justice system and make recommendations for strengthening our courts within the existing administrative framework.

"These respected and innovative leaders will provide the direction necessary in this era of change, ensuring that the justice system works for all," Chief Justice Martin said. "They bring with them decades of experience in the state and

federal judiciaries, business and nonprofit communities, legal education, and private practice."

Chief Justice Martin previously announced the appointment of the commission co-chairs, who will focus on five areas of inquiry: civil justice, criminal investigation and adjudication, legal professionalism, public trust and confidence, and technology. Chief Justice Martin assigned Byrd to the criminal investigation and adjudication committee.

Chief Justice Martin has also invited participation from the General Assembly. The commission's work will provide a basis for discussion with the General Assembly to help ensure North Carolina's Judicial Branch meets the needs of our citizens and their expectations for a modern court system. The commission will finalize its findings and recommendations in a series of reports that will be presented to the Chief Justice and made available to the public in early 2017.

In receiving his appointment, President Byrd had this to say: "I'm truly honored to be named to this important Commission by Chief Justice Mark Martin. Chief Justice Martin is a visionary and truly exemplifies what public service is all about. The work that this commission will undertake is vital to the future of the criminal justice system in North Carolina and will make us a model for the nation."

MEET NORTH CAROLINA PBA PRESIDENT RANDY BYRD

Randy Byrd is 49 years old and was born in Rocky Mt., NC. He was raised in the mountain community of Burnsville in Yancey County, North Carolina. Yancey County is home to Mt. Mitchell, the highest peak east of the Mississippi. Randy's parents James and Judy are both retired public school educators with 68 years of service between them. His dad retired as the librarian of the local high school and his mother retired as a

fourth grade teacher at a local elementary school. After high school, Randy received an Associate's Degree in Law Enforcement Technology (1989) and his Basic Law Enforcement certificate (1991) from Asheville-Buncombe Technical Community College in Asheville, NC.

In July of 1992, Randy accepted a position as a police officer with the Cary Police Department. During his 23 years of

service with the Cary Police Department he has served as a patrol officer, detective, sergeant in Field Operations, sergeant of IMPACT, and sergeant in Investigations. He currently is assigned to Field Operations as a patrol supervisor.

Randy has over 2400 hours of specialized training which include completion of the Criminal Investigations Certificate Program through the NC Justice Academy

(1999) and the Law Enforcement Management Institute through Coastal Plains Law Enforcement Training Institute (2002).

Randy has been a certified law enforcement instructor since July of 1996 and a certified physical fitness instructor since July of 2003. In this role, he has taught in numerous specialty areas of instruction. He was one of the first instructors in North Carolina to attend the "Train the Trainer" course for Community Policing. This training enabled him to teach for a number of years through the Carolina Institute of Community Policing. Randy traveled throughout North and South Carolina teaching community policing and applied problem solving at numerous agencies. Through these experiences he gained valuable analytical skills pertaining to issues problematic for both communities and the police agencies who serve them. He brought this insight to the Cary Police Department and taught officers how to broaden their abilities in dealing with community concerns. During his investigative career, Randy was instrumental in solving numerous cases including several that involved major burglary rings operating throughout North and South Carolina. Randy also developed a comprehensive proposal that led to the agencies first K-9 team. Responsibilities included the selection of the canine, the handler, developing policy, and becoming the supervisor of the team.

During his career, Randy has received numerous awards for his service. These awards include being an Employee of the Year nominee for the Town of Cary in 2006, Officer of the Year for the American Legion Post 67 in 2004, Plaque of



Randy joined the Cary Police Department in 1992

Appreciation for the North Carolina Criminal Information Exchange in 2003, Certificate of Appreciation from the South Carolina Police Corps in 2001, Certificate of Appreciation from the United States Secret Service in 2001, Town of Cary Merit Award for a Burglary Investigation in 2000, Advanced Law Enforcement Certificate from the NC Criminal Justice Education and Training Standards Division in 1998, Town of Cary Merit Award for developing the Cary Retailers Information Exchange Program in 1996, and numerous letters of appreciation/commendation from citizens, department members, and other agencies.

Randy's community activities have centered on giving back to officers with the Cary Police Department and the state of North Carolina as the president of both

the Cary Chapter and the North Carolina Division of the Police Benevolent Association. As president of the Cary Chapter, he was instrumental in developing the George Almond Officer of the Year Award. For nine years the Cary Chapter has held an annual banquet that honors the exemplary service of Cary officers while remembering the sacrifice and effort that fellow officer and PBA member George Almond made in his recovery after being shot in the line of duty. During this banquet, thousands of dollars have been raised for the Police Benevolent Foundation to provide funding for families of fallen officers.

As division president, Randy has worked in the General Assembly to support legislation to improve the lives of officers and survivors. His work with the PBA has led to two significant appointments that

have given him the opportunity to have input with the local and state retirement systems. In 2010, he was appointed to the North Carolina Future of Retirement Study Commission. This appointment was for eleven months. In 2012, he was appointed to the Board of Trustees for the State and Local Retirement System. This appointment was for a four-year term.

Randy is a 1998 graduate of Campbell University and has completed graduate work through the NC State University's Administrative Officers Management Certificate Program (2007).

Randy is engaged to Stephanie Lee and has two daughters through a previous marriage, Hailey and Jayme. ■

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POLICE LIVES MATTER: INCREASING POLITICIZED INDICTMENTS THREATEN THE LEGAL SAFETY OF OFFICERS

BY ATTORNEY J. MICHAEL MCGUINNESS, THE MCGUINNESS LAW FIRM

In recent months, America has been inundated with shouts of police brutality in Ferguson, Staten Island, Charlotte, Baltimore, and elsewhere. Coalitions of interest groups have loaded the airwaves with overt threats to the American police community by proposed reform that would endanger the lives of officers. Law enforcement officers have been assassinated and otherwise targeted in retaliation since the grand jury in Ferguson declined to indict Officer Darren Wilson. War has officially been declared on the American police community. The legal war against police officers is striking hard through politicized indictments across the country.



In Baltimore, multiple charges including homicide were suddenly brought by a prosecutor less than three weeks after an incident that sparked riots. In Charlotte, the first Grand Jury declined to indict Officer Wes Kerrick. The criminal action should have ended right there, as in other cases. Another Grand Jury was convened and returned a true bill. The trial jury hung 8 to 4 in favor of acquittal. Officer Kerrick was prosecuted for a shooting that appeared clearly justified.

THE LATEST SPARKS FROM BALTIMORE

Baltimore is one of the latest in the string of recent high profile disputes, where six police officers were suddenly charged after the local elected prosecutor staged a press conference to announce charges on May 1, 2015, following an incident that occurred less than three weeks earlier on April 12, 2015. The prosecutor publicly asserted repeated allegations and discussed alleged evidence, instantaneously tainting the entire case and ensuring that the charged officers will not receive a fair trial free from undue prosecutorial induced adverse publicity. The prosecutor openly revealed her motives:

“To the people of Baltimore and the demonstrators across America, I heard your call for ‘No justice, no peace.’” In her continuing message to the “youth of the city, This is your moment . . . you’re at the forefront of this cause and as young people, our time is now.”¹

Professor Alan Dershowitz objectively analyzed the charges and prosecutorial conduct.² Professor Dershowitz explained the many unnecessary problems created by the prosecutor: “This is a very sad day for justice . . . Today had nothing to do with justice. Today was crowd control. Everything was motivated by a threat of riots and a desire to prevent riots,” Dershowitz said. “They are presumed innocent, they need due process of law, and the mayor and the state attorney have made it virtually impossible for these defendants to get a fair trial. They have been presumed guilty.” “You cannot allow police officers or any other defendants to

become scapegoats for crowds demanding a continuation of rioting,” Dershowitz said. “There’s no plausible, hypothetical, conceivable case for murder under the facts as we now know them.”³

President Obama spoke of the challenges and dangers to the police community: “What these officers do is dangerous. They do it because it’s important. Maintaining the public safety is the foundation of everything that is good that happens every single day in America. It’s why parents can send their kids to school and adults can head off to work, and community centers and houses of worship can open their doors to one and all, and businesses can start and thrive. And that’s why people can cast their votes and express their views without fear. It’s one of the reasons people travel and do business in these United States.

And that’s why Americans everywhere owe a debt to our nation’s law enforcement. And we have to do our part by making sure all of you have the resources

1 See Marilyn Mosby Announces Criminal Charges In The Death of Freddie Gray, New York Daily News, <http://www.nydailynews.com/news/crime/criminal-charges-filed-freddie-gray-death-transcript-article-1.2206744>

2 See <http://www.cbsnews.com/videos/alan-dershowitz-officers-cannot-get-a-fair-trial/>

3 Alan Dershowitz: “Charges Against Baltimore Cops Won’t Stick?” <http://www.newsmax.com/Newsmax-Tv/Freddie-Gray-Alan-Dershowitz-police-charges/2015/05/01/id/642143/>

and protections and support that you need to do your job well.”⁴

Anti-police Internet group advocacy throughout the country is taking its toll on the police community. We must better unite to repel these escalating attacks. Our legal teams must be ready for war.

Recent cases demonstrate the complex legal challenges that often arise from the use of force in routine police encounters with criminal suspects. Police officer conduct is among the most controversial and misunderstood public interest topics in the country.⁵ Most people have an opinion about police use of force, but very few understand the basics of applicable law.

Many who advocate increasing indictments of officers reform because of Ferguson overlook core principles of long-settled law:

“[W]e must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.”⁶

“An officer of the law has the right to use such force as he may reasonably believe

necessary in the proper discharge of his duties to effect an arrest. ... [T]he officer is properly left with the discretion to determine the amount of force required under the circumstances as they appear to him at the time of the arrest.”⁷

Because of the unique law enforcement context, special rules have emerged for law enforcement use of force that are



substantially different from traditional tort and criminal law principles. The law of force is generally deferential to the reasonable *perceptions* and beliefs of a theoretical “reasonable objective officer” at the scene. Officer perception on the particular scene is the key to legal analysis.

Most of the recent public brouhaha arising from Ferguson and Baltimore appears to be founded upon: (1) a lack of understanding of the conditions and risks of contemporary policing in America when officers have to address suspects

and arrestees in often dangerous and/or uncertain environments; (2) emotion and the lack of objectivity; and (3) a lack of understanding of the most basic principles of use of force law.

High-profile disputes often prompt discussion regarding whether a law enforcement officer who was forced to respond to imminent danger should be criminally prosecuted for official actions in good faith. This increasing criminalization of American policing is among the most dangerous legal developments in law enforcement jurisprudence in recent decades.

As in Baltimore, more police officers are now being charged because of interest group pressure on elected prosecutors. This phenomenon is known as the politicization of law enforcement, which threatens the core of effective policing. Fortunately, most grand and petit jurors can figure out that most police officers are honorable public servants serving in the second most dangerous profession. Most grand and petit jurors understand that misperception, a mistaken belief, or a poor judgment call does not equate with criminal intent.

Many who opine about police use of force by loud speakers before the witnesses are even interviewed do not objectively

assess the totality of pertinent circumstances. The typical headline grabbing, distorted media sound bite often goes for this punch line: “Unarmed youth gunned down in cold blood by police officer.” The extensive facts and details that made the shooting justified do not help sell newspapers. Many do not want to hear a full account before labeling an honorable police officer as a murderer. Police officers do not contemplate criminal intent to commit murder or any crime. Rather, they want to do their best and arrive home alive. Most wisely opt to be tried by twelve rather than carried by six.

In 1970, William Westley explained that

4 Available at <https://www.whitehouse.gov/the-press-office/2014/05/12/remarks-president-and-vice-president-honoring-national-association-pol-0>

5 J. Michael McGuinness, A Primer on North Carolina and Federal Use of Force Law: Trends in Fourth Amendment Doctrine, Qualified Immunity, and State Immunity, and State Law Issues, 31 CAMPBELL L. REV. 431 (2009); J. Michael McGuinness, Law Enforcement Use of Force: The Objective Reasonableness Standards Under North Carolina and Federal Law, 24 CAMPBELL L. REV. 201, 202 & n.4 (2002), citing, inter alia, *People v. Boss*, 701 N.Y.S. 2d 392 (1999) (the Abadou Diallo case).

6 *Smith v. Freeland*, 954 F.2d 343, 347 (6th Cir. 1992).

7 *State v. Anderson*, 253 S.E.2d 48, 50 (N.C. Ct. App. 1979).

“[t]he policeman’s world is spawned of degradation, corruption and insecurity. ... [H]e walks alone, like a pedestrian in Hell.”⁸ Forty-five years later, that is still true throughout America. Violence against law enforcement officers has exploded in recent years to horrific levels. The core mission of American policing requires law enforcement officers to physically encounter a broad range of suspects and others in the course of their ordinary duties.

National data demonstrates the tragedy of the increasing mayhem and death inflicted on the American police community. The *National Law Enforcement Officer Memorial Fund* provides the current data demonstrating the escalating massive violence against police officers.⁹ Officers “died in a variety of situations – arrests, traffic pursuits or stops, investigations of suspicious persons or circumstances, ambushes, tactical situations, disturbance calls, and more.”¹⁰ Police officers regularly face severe risks in split-second environments like no other professionals. The death and injuries to officers are so prevalent that a new term should be coined: *suspect brutality*.

Statutory and constitutional law has long recognized unique factors confronting police officers when force is often apparently necessary. Officers are often confronted with environmental constraints and exigent circumstances that materially impede well-reasoned instantaneous decision-making in potential life or death scenarios. Some of these include darkness and other poor lighting conditions, glare, other visibility constraints, rapidly evolving circumstances, uncertain terrain, reflections from police lights, noise, agitated suspects and or witnesses, and anxiety and emotion.

Honest mistaken beliefs in many enforcement environments are common and easy to make. These unique contexts, along

with more hostile suspects who make foolish sudden furtive movements into pockets, waistbands, purses and other locations where deadly weapons may be hidden, often put police officers into environments where they are “pedestrians in hell.” The doctrine of mistaken beliefs insulates officers from liability when their conduct is based upon a reasonable mistaken belief.

Many police use of force incidents invoke a complex body of overlapping legal principles. Proper evaluation of a law enforcement use of force case necessitates analysis of federal constitutional standards, state law statutory standards, and common law standards. In addition to qualified immunity and other potential defenses, police officers also enjoy the right of self-defense and defense of others.

A FLUID INCIDENT SCENE ENVIRONMENT OFTEN REQUIRES SPLIT-SECOND DECISIONS

In a split second, law enforcement officers are required to recognize a threat, evaluate the seriousness of the threat, and instantaneously employ potentially deadly force against criminal suspects to combat apparent dangers to citizens, bystanders, fellow officers, and themselves. Scores of cases have recognized that “an officer oftentimes only has a split second to make the critical judgment of whether to use his weapon.” The evolving body of use of force law mandates a complete factual assessment of the unique facts and circumstances “at the moment” of the particular use of force.

The law expressly prohibits courts and juries from “Monday morning quarterbacking” in these often difficult cases.¹¹ In use of force cases, the central issue is typically *whether an objectively reasonable officer could have reasonably believed that the force employed was appropriate under the circumstances*.¹²

THE PREVAILING OBJECTIVE REASONABLENESS STANDARD

In *Graham v. Connor*,¹³ the Supreme Court in 1989 enunciated the parameters of use of force law under the Fourth Amendment:

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.

[T]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, however, its proper application requires careful attention to the facts and circumstances of each particular case, including, the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.

The Court in *Graham* explained that an officer’s evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer’s good intentions make an objectively unreasonable use of force constitutional. *Graham* addressed the substantive use of force standards and the importance of an officer’s on-scene perspective:

[P]olice officers are often forced to make split-second judgments; ... the reasonableness of the officer’s belief as to the appropriate level of force should be judged from that on-scene perspective. [omitting citations] We set out a test that cautioned against the ‘20/20 vision of hindsight’ in favor of deference to the judgment of reasonable officers on the scene.

¹³ *Graham*, 490 U.S. at 395.

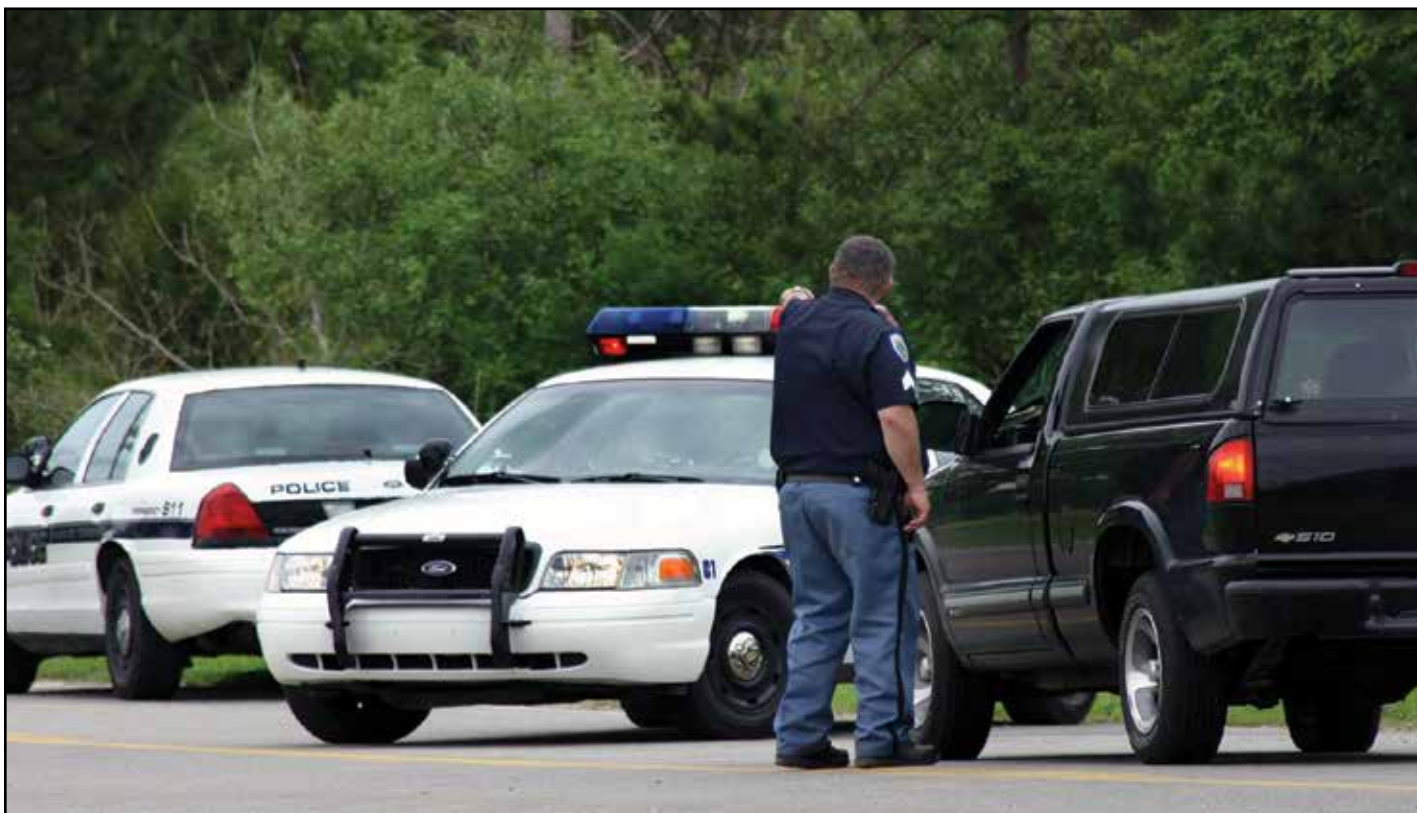
⁸ William A. Westley, *Violence and the Police* (1970).

⁹ On average, over the last decade, there have been 58,261 assaults against police officers each year in the line of duty, and an average of one death every 58 hours. www.nleomf.org/facts/enforcement (2015). See also Officer Down Memorial Page, www.odmp.org.

¹⁰ The Risks to the Thin Blue Line, Oct. 28, 2013; www.fbi.gov/news/stories/203/October

¹¹ See *Graham v. Connor*, 490 U.S. 386, 396-97 (1989); *Schulz v. Long*, 44 F.3d 643, 649 (8th Cir. 1995); *Myers v. Baltimore County*, 713 F.3d 723 (4th Cir. 2013).

¹² *Graham*, *supra* note 15; *Scott v. Harris*, 550 U.S. 372, 380 (2007).



Escape scenarios often result in conduct warranting force. In *Tennessee v. Garner*,¹⁴ the Supreme Court explained:

If the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent the escape. ...

In *Saucier v. Katz*,¹⁵ the Supreme Court recognized the *doctrine of mistaken beliefs*, which provides that “[if] an officer reasonably, but mistakenly, believed that the suspect was likely to fight back, for instance, the officer would be justified in using more force than in fact was needed.” The Court explained that the qualified immunity inquiry includes a further dimension of *the doctrine of mistaken beliefs*:

The concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct. It is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation

the officer confronts. An officer might correctly perceive all of the relevant facts but have a mistaken understanding as to whether a particular amount of force is legal in those circumstances. If the officer’s mistake as to what the law requires is reasonable, however, the officer is entitled to the immunity defense.

The Court observed in *Saucier* that “qualified immunity operates in this case, then, just as it does in others, to protect officers from the sometimes ‘hazy border between excessive and acceptable force.’” Because of this hazy border, few cases of instantaneous judgment call shootings will ever constitute probable cause for an on-duty crime. In *Saucier*, the Court explained how officers could technically violate the Fourth Amendment by unreasonable conduct yet nevertheless receive the benefit of qualified immunity for reasonable mistakes as to the legality of their actions. In *Saucier*, the Court concluded that a reasonable officer in Saucier’s position could have reasonably believed that the force used was appropriate. Thus, Saucier was immune from liability.

Saucier emphasizes the application of qualified immunity for officers even when there has been a mistake that has resulted in injury. Officers are human and

will make mistakes; *Saucier* mandates that officers are still entitled to individual qualified immunity liability protection when their mistakes are reasonable.

In *Scott v. Harris*,¹⁶ the Supreme Court in 2007 reaffirmed the *Graham* use of force standards in a high-profile vehicular chase case. In *Plumhoff v. Rickard*,¹⁷ the Supreme Court in 2014 addressed another alleged excessive force case arising from a vehicular chase. In *Plumhoff*, the Court reaffirmed the use of force tests from *Graham* and *Garner*. *Plumhoff* reaffirmed application of the deferential split-second decision-making 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 entitled to qualified immunity from suit.

In order to establish criminal liability for excessive force, the liability standards are substantially higher, including a willfulness standard and evidence beyond a

14 *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

15 *Saucier v. Katz*, 533 U.S. 194, 205 (2001).

16 550 U.S. 372 (2007).

17 134 S. Ct. 2012 (2014).



reasonable doubt.¹⁸ There are compelling reasons why few officers are criminally convicted of excessive force. Among other reasons, few cases contain any evidence of criminal intent. A poor judgment call is not a crime.

APPARENT DANGER NECESSITATES REASONABLE FORCE

Law enforcement officers are required to react to *apparent dangers and apparent weapons* because typical conditions, lag time, and the “reactionary gap” do not allow for an officer to wait to ascertain a precise weapon with certainty. Typical conditions in routine police encounters present the likelihood of mistakes.

Most of these split-second decisions to use force are correct while some are mistaken. Under what circumstances does a *mistaken belief* that deadly force is necessary subject an officer to civil or criminal liability? Generally, if the officer’s mistaken belief is reasonable under the circumstances, then the officer is not subject to any civil or criminal liability under settled authority. The perceived danger must only be *apparent*, not real or

actual, in order to justify the use of deadly force. The fact that the suspect was not armed is often a media punch line to infer misconduct, but most fact patterns demonstrate that there appeared to be an *apparent weapon*.

Courts have recognized that a police officer is not required to “await the glint of steel” before he or she can act to preserve his or her own safety because once the glint of steel appears, it is “often ... too late” to take safety precautions.¹⁹ A number of factors have contributed to the environment necessitating decisive police response to apparent danger. First, civil rights advocates have challenged police for the failure to protect citizens from better-armed criminals. This phenomenon has been particularly prevalent in the alleged domestic violence context. Law-abiding citizens demand instantaneous and decisive law enforcement responses to their legitimate needs.

The Supreme Court has long recognized the “practical difficulties of attempting to assess the suspect’s dangerousness.”²⁰

Courts have also generally recognized that law enforcement officers are particularly vulnerable to unfounded claims of abuse.²¹

Courts have recognized a common gesture that fuels the need for the use of force: the *sudden reach towards a pocket or the waistband area*. Such gestures present grave risks for officers and citizens. In *People v. Benjamin*,²² the court explained:

It is quite apparent to an experienced police officer and indeed it may almost be considered common knowledge, that a handgun is often carried in the waistband. It is equally apparent that law-abiding persons do not normally step back while reaching to the rear of the waistband, with both hands, to where such a weapon may be carried. Although such action may be consistent with innocuous behavior, it would be unrealistic to require [the police] to assume the risk that the defendant’s conduct were in fact innocuous or innocent. *Indeed, it would be absurd to suggest that a police officer has to await*

18 Eg., *United States v. Lanier*, 520 U.S. 259 (1997).

19 *People v. Morales*, 198 A.D.2d 129, 603 N.Y. Supp. 2d 319 (1st Dept. 1993).

20 *Tennessee v. Garner*, 471 U.S. 1, 20 (1985); *Sigman v. Town of Chapel Hill*, 161 F.3d 782 (4th Cir. 1998) (reasonable perception of a weapon warrants deadly force).

21 See, e.g., *Brooks v. Scheib*, 813 F.2d 1191, 1194 (11th Cir. 1987) (holding that officers working in high crime areas are likely subject to higher numbers of complaints).

22 51 N.Y. 2d 267, 434 N.Y. Supp. 2d 144 (1980) (emphasis added).

the glint of steel before he can act to preserve his safety.

Law enforcement officers are trained to evaluate human behavior as part of their basic functions. Attempts to evade the officer, as well as furtive glances, sudden turns, and ignoring requests to bring one's hands into view are common indicia of behavior that demonstrates reasonable suspicion and prospective danger.²³ Suspects who practice these dangers are often teetering on de facto suicide. Michael Brown should have well known that efforts to steal Officer Wilson's defensive service weapon would be met with immediate self-defense.

If there is *apparent danger* to the officer or to any citizens, a law enforcement officer is *required* to stop the threat to the officer or citizen. Officer safety is recognized by the Supreme Court as a "legitimate and weighty" interest.²⁴ In *Davis v. Freels*,²⁵ a leading police shooting case, the court discussed an officer's reasonable belief that danger exists:

[It] is not necessary that the danger which gave rise to the belief actually existed; it is sufficient that the person resorting to self-defense at the time involved reasonably believed in the existence of such a danger, and such reasonable belief is sufficient even where it is mistaken.

In *Slattery v. Rizzo*,²⁶ an officer who shot the suspect was absolved of liability because it was objectively reasonable for the officer to have believed the suspect was reaching for a gun, when in fact the object in the suspect's hands was actually a beer bottle. In *McLenagan v. Karnes*,²⁷ an officer was absolved of liability when the officer shot an unarmed suspect who appeared to be chasing another officer. Although the suspect was unarmed and handcuffed in front, the officer could not confirm there was no weapon. In *McLenagan*, the court explained:

23 See, e.g., *People v. Warren*, 205 A.D.2d 368, 613 N.Y. Supp. 2d 375 (1st Dept. 1994); *People v. Alonzo*, 180 A.D.2d 584, 580 N.Y. Supp. 2d 298 (1st Dept. 1992); *People v. Rodriguez*, 177 A.D. 521, 575 N.Y. Supp. 2d 911 (2d Dept. 1991).

24 *Arizona v. Johnson*, 129 S. Ct. 781, 782 (2009).

25 583 F.2d 337, 341 (7th Cir. 1978).

26 939 F.2d 213 (4th Cir. 1991).

27 27 F.3d 1002, 1007 (4th Cir. 1994).

A suspect's failure to raise his hands in compliance with a police officer's command to do so may support the existence of probable cause to believe that the suspect is armed.

We do not think it wise to require a police officer, in all instances, to actually detect the presence of an object in a suspect's hands before firing on him.

We will not second-guess the split-second judgment of a trained police officer merely because that judgment turns out to be mistaken, particularly where inaction could have resulted in death or serious injury to the officer or others. ... Section 1983 does not purport to redress injuries resulting from reasonable mistakes.

THE 'COULD HAVE BELIEVED' STANDARD PROTECTS OFFICER SAFETY

In *Hunter v. Bryant*,²⁸ the Supreme Court adopted the "could have believed" standard in law enforcement use of force cases. This standard absolves the officer of liability "if a reasonable officer could have believed [the conduct in issue] to be lawful, in light of clearly established law and the information the [arresting] officers possessed." Courts now routinely apply the "could have believed" standard in use of force litigation.

These and other cases demonstrate that the number of shots fired is generally not a determinative factor in the use of force inquiry. Police officers must employ defensive force until the threat is stopped. Modern police firearms will typically fire up to 15 rounds in a matter of three or four seconds. Because officers must first recognize that a threat has stopped and then stop firing (reactionary gap), it is not unusual to have an extensive number of shots in a given encounter.

Because of the reactionary gap phenomenon, it is not unusual for shots to enter a suspect in the side or in the back. In the time it takes to unholster, prepare and fire a weapon, often the position of the suspect has changed. After the first shot or warning, it is not unusual for a suspect to turn his or her back to the officer out

28 502 U.S. 224, 227 (1991).

of fear. These scenarios often justify back shootings, which on the surface may appear suspicious to lay persons.

CONCLUSION

Interest groups promoting reform should focus energy at the threshold of a serious problem: Suspects and others who engage in hostile threats to the safety of officers and bystanders or make movements inferring a possible deadly threat are creating havoc for themselves. Education and training are needed so that citizens do not effectively commit suicide by cop. Why don't we institute a national program of mandatory civics education in elementary and high schools including training on how to address and respond to police officers?

Prosecutors must apprehend compelling points of law demonstrating that officers should only very rarely be indicted for use of force when no reasonable officer could have reasonably believed that the force used was appropriate under the circumstances as the officer perceived. Interest group pressures on elected prosecutors must be rejected. Decisions to indict officers should be premised upon facts and law, not emotion and politics. Police lives matter. ■



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.

HUNTER V. TOWN OF MOCKSVILLE: REPORTS OF PERCEIVED MISCONDUCT ARE PROTECTED PRIVATE CITIZEN EXPRESSION

BY JOHN C. MIDGETTE, EXECUTIVE DIRECTOR, NCPBA

Law enforcement officers are increasingly being subjected to retaliation for a broad range of expression and activities. Historically, many in police management believed that officers “cannot criticize the police brass.” However, officers are supposed to communicate their observations of possible misconduct. Officers are not supposed to suffer retaliation for simply communicating their observations.

Three police officers in Mocksville were all fired on the same day, December 29, 2011, due to their protected conduct in communicating about problems in their department. This case, along with many others like it, reaffirms the need for both state and federal legislation to protect police officers who report perceived misconduct. Although these officers prevailed in getting their case to trial before a jury, legislation is needed to clarify the law and ensure whistleblowing protection is available for all officers.

The official decision of the U.S. Court of Appeals for the Fourth Circuit¹ recently reported this case as follows based upon the evidence offered by Plaintiffs in the summary judgment motion before the Court: Kenneth L. Hunter (“Hunter”), Rick A. Donathan (“Donathan”), and Jerry D. Medlin (“Medlin”), served as police officers with the Mocksville Police Department. Hunter, an assistant chief, had worked for the Mocksville PD since 1985; Donathan, a lieutenant, had been with the Mocksville PD since 1998; and Medlin had served as an officer since 2006. All three had distinguished careers with the Mocksville PD, receiving honors and promotions throughout their tenures.

Defendant Robert W. Cook (“Cook”) joined the Mocksville PD as police chief in 2005. Over time, Plaintiffs became concerned about Cook’s behavior and leadership. For example, Plaintiffs indicated that they saw Cook drink



alcohol publicly, excessively, and while in uniform and feared that it reflected poorly on the Mocksville PD. Plaintiffs also believed that Cook violated the law by driving a police car with blue flashing lights and behaving as if he were a certified law enforcement officer when, in reality, he had never been certified and was only an “administrative” chief. Plaintiffs suspected that Cook and his ally and deputy chief, Daniel Matthews, were together mismanaging Mocksville PD and other public funds and even using those funds for personal gain. Plaintiffs perceived racial discrimination at the Mocksville Police Department. Plaintiffs also believed that Cook “fixed” tickets for his friends.

Plaintiffs independently raised such concerns about Cook with Mocksville Town Manager, Defendant Christine W. Bralley (“Bralley”). Yet they noticed no improvement after reporting their concerns to Bralley and instead perceived reasons to worry about retaliation. Donathan, for example, raised his concerns with Bralley and was soon thereafter criticized by Matthews about a concern he had raised with Bralley. And a month after Medlin

sent Bralley a sealed letter detailing concerns about the Mocksville PD, Cook demoted him. That demotion was ultimately reversed.

In November 2011, the situation at the Mocksville PD escalated. Cook reorganized the department, elevating Matthews to second-in-command and stripping Hunter, one of only two African-Americans at the Mocksville PD, of his supervisory responsibilities. Hunter filed a grievance about his demotion, but his grievance, and concerns, were dismissed. Donathan, on the other hand, was invited to Cook’s home, instructed to “adhere to the ‘politics’ of the MPD,” and promoted to lieutenant.

In early December 2011, five Mocksville PD officers, including all three Plaintiffs, met privately to discuss their concerns about Cook and his ally Matthews. At that meeting, Plaintiffs decided to seek an investigation by an outside agency into corruption at the Mocksville PD. According to Hunter, Plaintiffs made this decision because they felt, “as citizens of the community, that Mocksville deserved an effective police force that served everyone equally” and not because they felt it was “part of our job duties.”

Plaintiffs set up a meeting with local representatives of the National Association for the Advancement of Colored People (“NAACP”), who, after hearing Plaintiffs’ concerns, advised them to contact a state agency. Accordingly, Plaintiffs decided to contact the North Carolina Attorney General. Hunter had his “daughter purchase a disposable phone at Walmart that could be used to report our citizen complaints separately from our affiliation with the MPD.”

On December 14, 2011, Plaintiffs got together and used the disposable phone to call the Attorney General’s Office. The Attorney General, however, referred Plaintiffs to local authorities who were closely aligned with Cook and whom Plaintiffs therefore felt they could not

¹ Hunter v. Town of Mocksville, 789 F.3d 389 (4th Circuit, N.C. 2015)

contact. Plaintiffs then called the North Carolina Governor's Office, again using the disposable phone. Without identifying either themselves or the Mocksville PD, Plaintiffs conveyed some of their concerns, including their suspicions that Cook embezzled funds, had a drinking problem, and masqueraded as a certified officer with powers to, for example, use blue lights and pull people over even though he was only an administrative chief without the authority to do so. The Governor's Office representative asked for a telephone number at which someone could return the call, and Plaintiffs gave the number for the disposable phone.

Later that day, someone else from the Governor's Office called the disposable phone. Donathan answered the call, spoke to the representative, and identified the Mocksville PD to the representative. The Governor's Office representative offered to request that the State Bureau of Investigation ("SBI") investigate the Mocksville PD.

The next week, Medlin saw the local SBI Agent, D.J. Smith, at the Mocksville PD office. Plaintiffs knew that Smith had a close relationship with both Cook and Matthews. Medlin saw Smith show Matthews a piece of paper and saw the two men look for Cook. On December 22, 2011, Plaintiffs received a message from Smith, who called the disposable phone. Smith left a message identifying himself and stating that he was following up on the request for an investigation. Plaintiffs did not return the call because "we did not trust any local authorities in investigating our concerns because of Chief Cook's influence" and thus "disposed of the phone for fear that Chief Cook may search the police department and find it."

As it turned out, the phone was nevertheless "found." Smith contacted the Davie County Sheriff's Office, the county in which Mocksville is located, and asked an officer there to check whether the phone number used to make that complaint belonged to anyone at the Sheriff's Office. The Sheriff's Department officer contacted the Mocksville PD and asked an officer there to run the number through Mocksville PD records. The officer also called the disposable phone himself - though Plaintiffs did not pick up.

On December 27, 2011, Bralley contacted Sprint customer service to set up an online account, explaining that she wanted to check call records for a specific telephone number. The Sprint invoice issued that same day for the billing period ending December 23, 2011, included phone calls to the disposable phone's number. Both Donathan and Medlin had placed calls to and received calls from the disposable phone using their Mocksville PD-issued mobile phones.

On December 29, 2011, Chief Cook fired all three Plaintiffs. This was the first time Cook had fired anyone during his tenure as the Mocksville PD chief. Officer misbehavior—including illegal drug use and even criminal activity—had previously occurred. But the officers in those cases received lesser punishments or were allowed to voluntarily resign rather than be fired.

All three Plaintiffs received similar termination letters that gave performance justifications such as "[i]nsubordinat[ion]," "[a]ttitude," "[r]umored [f]alse [d]etermental [sic][i]nformation," and "other conduct unbecoming an Officer." Plaintiffs had been given no notice of these performance issues before they were fired. In an after-the-fact memo to the town attorney, Cook expressly mentioned Plaintiffs' telephone call to the Governor and SBI, claiming Plaintiffs "conspire[d]" to discredit him, Bralley, and others in calls to "SBI and Governor with false information"—information Cook claimed "[t]he SBI and DA have determined ... to be slanderous and false." Around the time Cook fired Plaintiffs, Cook called the local district attorney and told him that "you can't have people in-house that are continually undercutting you and causing trouble."

ANALYSIS

It is astonishing that law enforcement officers have to endure this in 2015. Fortunately, the Defendants were brought to justice before U.S. District Judge Catherine Eagles. She denied Defendants' motion for summary judgment and Defendants appealed. The U.S. Court of Appeals affirmed and ruled in favor of the officers. Judge James Wynn of North

Carolina authored the decision.

While this decision makes great sense, a case from the U.S. Supreme Court a few years ago muddied the waters. In *Garcetti v. Ceballos*, 547 U.S. 40 (2006), the Supreme Court addressed a case involving a whistleblowing prosecutor. There, the Court carved out new and difficult standards for constitutional expression cases. The *Garcetti* case added a hurdle that in order for speech to be protected, that the speech has to be in the context of a speaking citizen as opposed to a speaking employee. This "status" test for speech protection has created much confusion.

In police cases, it is often unclear as to precisely what if any particular status the officer was in at the time of the speech. Was it citizen speech, or speech as an officer compelled by his or her duties of office? Under *Garcetti*, if an officer had a duty to speak, then the speech is without protection. However, that is hardly a sensible or workable solution. The Supreme Court needs to clarify the muddled mess from *Garcetti*. In the meantime, legislators need to address these problems.

In *Hunter*, reports of possible misconduct to the Governor by police officers was ruled to be protected expression. That's a good start, but legislation is needed to clarify the law and to ensure that all forms of legitimate whistleblowing are protected.

The current federal constitutional case law is a checkerboard where some officers are protected and others are not, depending upon academic nuances in the law about their "status" when speaking. In the last few years, the Fourth Circuit Court of Appeals has been more officer friendly. Many new judges on the Court well understand the dangers and damages from retaliation against officers. A simple whistleblower bill affording a framework of protection for police officers in all contexts would improve and enhance officer safety and the rule of law. When officers observe possible misconduct, they should report it - and they should surely be protected for such reports regardless of the academic niceties of their status. Being a police officer is status enough to be free of retaliation. ■

5 NOTORIOUS OUTLAWS FROM ALABAMA'S WILD WEST DAYS

BY KELLY KAZEK, AL.COM CONTRIBUTING WRITER

Most people don't think of Alabama as part of the "Wild West," but at one time, the territory was considered pretty far west and had its share of truly wild outlaws.

In the first half century of our country's existence, Alabama was viewed as a land of opportunity as settlers moved from the country's first settlements along the east coast.

But in those early days, the land was harsh, the settlements were scattered, and people had to be tough to survive. It was a perfect setting for lawlessness.

Here is a look at five notorious outlaws from Alabama's Wild West days, excerpted from the 2014 book "Alabama Scoundrels: Outlaws, Pirates, Bandits & Bushwhackers."

BLOODY BOB SIMS



Robert Sims, a moonshiner known as "Bloody Bob Sims"

Initially, Robert Bruce Sims, born in 1839, seemed an unlikely outlaw. A Confederate veteran who fought with the Twenty-Second Alabama Infantry, Sims was injured and captured by Union troops and imprisoned at Camp Morton in Indiana. Sims returned home to resume farming in the Womack Hill community of Choctaw County and, at one time, served as county road surveyor. He was a church-going man, but as Sims' beliefs

grew more divergent from standard teachings, he was at odds with local pastors and founded his own church. The sect would become known as "Simsites."

The trouble for the Simsites started when Bob Sims began a moonshine business. Because he believed God's was the only true law, Sims refused to be bound by man's laws and believed he did not have to pay taxes on land or goods or his liquor.

In 1891, the first episode of violence started what was known as the Choctaw County War. One of Sims' followers wanted to court the daughter of the Rev. Richard Bryant Carroll, a pastor from Soulwipa who preached against Sims' moonshining. Carroll sent the suitor away, refusing him access to his daughter. The next morning, May 1, Carroll was found shot to death on his porch. Although no one was arrested, members of the community suspected Sims and his followers.

After several more volleys in the Sims War, Sims' violence reached its height on Dec. 23, 1891, after Sims and his men attacked and burned the home of local merchant John McMillan, who was one of several people in town who had reported Sims to federal authorities. Those living inside the home - including women and 10 children - awoke to the smell of smoke and, one by one, ran from the burning home. As they exited, Sims and his followers opened fire, indiscriminately killing anyone who ran out. When the shooting stopped, one adult and three children were dead. At least nine others, including Belle McKenzie, a young teacher boarding at the home, were wounded. Belle died from her wounds three weeks later.

Determined to capture Sims and his followers, a posse and hundreds of outraged residents surrounded the Sims home on Christmas Eve, cornering Sims, his wife, their children and several church members. Finally, on Christmas day, Sims agreed to give himself up if the sheriff would promise to protect him and his

followers from the angry mob.

The sheriff agreed and took Sims and his followers into custody.

The sect members were escorted toward jail by 25 men for protection. Soon, the angry mob caught up to the wagon and the four men were jerked from inside and hung from nearby trees. The women, however, were spared.

Sims' family and followers who were lynched that Christmas season were eventually buried in Sims Cemetery, where their tombstones remain a testimony to the war begun by the man who came to be called "Bloody Bob Sims."

RUBE BURROW



Portrait of Rube Burrow (Contributed by the Alabama Department of Archives and History)

Reuben Houston Burrow was the son of a witch ... or so people said.

He was born one of ten children to Allen and Martha "Dame" Terry Burrow near the town of Sulligent in Lamar County. Dame Burrow had a reputation for faith healing and some say she could cure cancer simply by uttering an incantation.

Rube Burrow, sometimes spelled "Burrows," was born in 1854 or 1855 and raised on the family farm in this atmosphere of superstition where items in the larder might include eye of newt, toe of



The body of one of Alabama's most notorious outlaws, Rube Burrow, was displayed in a coffin following his death

frog, wool of bat and lizard's leg.

He would also witness illegal activity and brushes with the law when his father, a Confederate veteran, supplemented his income as a moonshiner.

Rube was especially close to his younger brother Jim, born in 1858, and the two were fascinated by tales of Jesse James and his gang of outlaws.

Rube began following in James' footsteps early: When he was only 15 years old, Rube reportedly donned a mask and robbed a neighbor at gunpoint but his father discovered him and made him return the money.

Soon, with James as his inspiration, Rube would turn to robbing trains after his attempt to be a farmer and family man failed.

In 1872, when he was about 18 years old, Rube left the family farm and moved to Stephenville, Texas. He tried to live the life of a respectable family man but when he failed at farming, he and his brother Jim began a career as criminals.

From 1886 to 1890, the Burrows and their gang robbed express trains in Texas, Alabama, Arkansas, Louisiana, and Indian Territory, all the while eluding capture by lawmen and investigators from the Pinkerton National Detective Agency.

Burrow and his men eventually returned to Lamar County, Ala., with the knowledge that Rube's large network of siblings would give them safe haven. Into 1889, they stayed successfully hidden until Rube murdered a well-known and respected local postmaster, Mose Graves. Graves had refused to hand over a package to Rube, thinking it looked suspicious and Rube shot him. The package contained a wig and false mustache for Rube to disguise his appearance. By this time, even Lamar County residents were turning against Rube.

Burrow robbed two more trains later in the year and was pursued by Pinkerton detectives.

On Oct. 9, 1890, Rube was captured by Jesse Hildreth and Frank Marshall at George Ford's cabin in Marengo County, Alabama. He would be shot to death by local merchant Jefferson Davis Carter during an escape attempt.

The body of the notorious outlaw was shipped to Lamar County by train. It would make several stops along the way to let people view the body. In Birmingham, thousands of people reportedly turned out to view the corpse and to snatch souvenirs such as buttons from his coat, snippets of hair and even his boots.

Rube's father met the train when it arrived in Sulligent. When the coffin was opened to allow him to make positive identification, he reportedly said, "It is Rube."

Rube Burrow was buried in Fellowship Cemetery, where his grave is marked with a simple concrete stone with his name crudely etched into its surface.

RAILROAD BILL

A man who came to be known as Railroad Bill carried out his lawless acts in southern Alabama and northern Florida in the mid-1890s. His activities took on to mythic proportions in life and his legend continued to grow after his death.

Even though Bill McCoy - aka Morris Slater or Railroad Bill - was reportedly killed in 1897, Louisville & Nashville Railroad workers to this day report seeing the image of a man limping along the tracks that run north to south from Alabama into Pensacola, Fla. Many witnesses say the man watches them very closely, almost menacingly, but never speaks. If he is watched too long, the mysterious man will walk into a nearby forest and disappear. Railroad employees and locals feel this mysterious spirit is that of Railroad Bill who, during his time terrorizing the area, never shied away from letting people think that he had supernatural powers. Many mysterious qualities were attributed to Bill in life, including shape shifting and the ability to disappear and make bloodhounds lose their smell. Others said Bill could only be killed with a silver bullet.

The legend of Railroad Bill began in the winter of 1894 when railroad employees began noticing a vagrant illegally riding the trains on the L&N Railroad line in southern Alabama near the Florida line. Bill eluded them, hijacking a train car in the process.

This incident initiated a manhunt after the railroad detectives gathered a posse and began tracking the man they were now calling Railroad Bill. The posse spent several weeks tracking Bill and, following leads, they finally arrived in Bay Minette on April 6, 1895. Details on what transpired in the town that day are sketchy, but historians report that the posse of about 20 men confronted the man they thought was Railroad Bill and a gun fight broke out. When the gunfight ended, Baldwin County Deputy Sheriff



*J. Leonard McGowan with the body of Railroad Bill
(Contributed by Encyclopedia of Alabama)*

James Stewart was dead and Railroad Bill was still on the loose, now wanted for murdering a lawman.

As the legend of Railroad Bill grew, robberies of every train and business were attributed to him, although he could not possibly have committed them all. The claims only fueled the myth, putting law enforcement officers, railroad security and multiple private detection agencies on his trail.

It was the middle of the afternoon on a clear day in Atmore when Railroad Bill met his demise: J. Leonard McGowan squeezed the trigger of his rifle, firing the round that mortally wounded Railroad Bill. Less than one second after the outlaw was struck by McGowan's rifle round, his body was struck a second time by buckshot from a local shopkeeper's shotgun. The rest of the posse, hearing the gunfire, arrived on the scene and also opened fire on the corpse of Railroad Bill. After years of looting, robbing, and murdering along the Alabama-Florida line, the notorious outlaw was dead.

Because the outlaw was so well-known and feared, authorities wanted to prove to residents that Railroad Bill had been killed, so his body was put on public

display. The body was first displayed in Brewton, where hundreds of people came to view it. Curious souvenir hunters even went so far as to pay 50 cents for a photo of McGowan with his rifle standing over Railroad Bill's corpse.

The preserved body reportedly remained on display in Brewton for a week before being transported to Montgomery, to be displayed for another week where it attracted thousands of spectators, before then being transported to Pensacola, Fla., where even more curious onlookers paid 25 cents to view the body. After this stop, Railroad Bill was quietly buried in an unmarked grave outside of the city.

Songs and books, and even a play, have been written about Railroad Bill.

MOUNTAIN TOM CLARK

Tom Clark, one of the most feared men in North Alabama in his day, is buried beneath Tennessee Street near Florence City Cemetery in Lauderdale County. The people of Florence dedicated a memorial plaque to mark the grave, the inscription of which reads:

"The notorious outlaw gang leader who boasted that no one would ever run over Tom Clark lies buried near the center of Tennessee Street where now all who pass by do run over him. In 1872, Clark, who terrorized helpless citizens during the Civil War, confessed to at least nineteen murders, including a child, and was hanged with two companions. Although graves were already dug in a nearby field, outraged

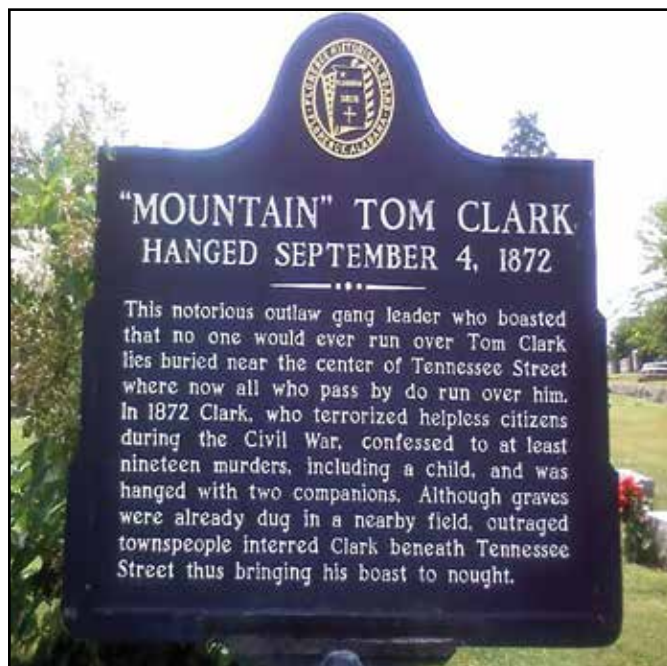
townspeople interred Clark beneath Tennessee Street thus bringing his boast to naught."

Tom Clark first came to Lauderdale County in either late 1862 or early 1863 and moved into what was known as the Blackburn settlement. Locals immediately gave the new man the nickname "Mountain Tom Clark" because there was already a Tom Clark in the area, and the stranger had come from a mountainous county. Clark was on the run from the Confederate conscription law but he was eventually forced into service.

At the first opportunity, he fled the Confederate camp, making his way north to Clifton, Tennessee, where he enlisted in the Union army. He soon deserted it, as well.

Not long after his departure from the Union army, Clark fell in with what many locals would call one of the worst gang of cutthroats that ever cursed the face of the earth. People in northwest Alabama called them the Booger Gang.

Over the next several months in Florence, Clark and his gang tortured several citizens. Eventually, the violence began to catch up to the outlaws, and two of the Booger Gang were caught and shot to death by federal authorities.

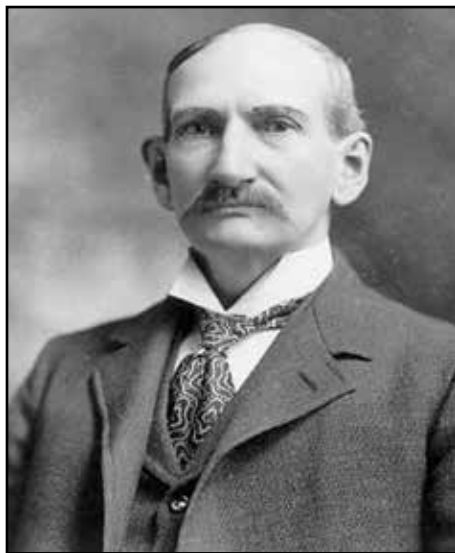


This marker about Mountain Tom Clark was erected near his grave in the middle of Tennessee Street in Florence

Clark had taken refuge for several years in the mountain areas of Jackson County, but in September of 1872, he was visiting Waterloo when someone recognized him and reported his whereabouts to Sheriff Ed Blair in Florence. The sheriff gathered a small posse and rode out to Waterloo, where they were able to capture Clark and two other outlaws on Pettypool Hill, near Gravelly Springs.

On Sept. 14, 1872, a lynch mob formed and the outlaws were wrested from the jail and taken a short distance to a lot on the corner of Tombigbee and Pine streets in Florence. There, all three were hanged from the branches of a large sycamore tree.

After the execution, the women of Florence went to the mayor and requested that Clark and the other men not be interred in the consecrated ground of the Florence Cemetery. The mayor agreed and the bodies were taken to a field across from the cemetery where the two wanted Indiana men were buried. One man in the mob recalled hearing Tom Clark boasting, "No man will ever run over Tom Clark!" So members of the mob dug up the road and buried his body under Tennessee Street, just outside the gates of the Florence Cemetery, where it reportedly remains to this day.



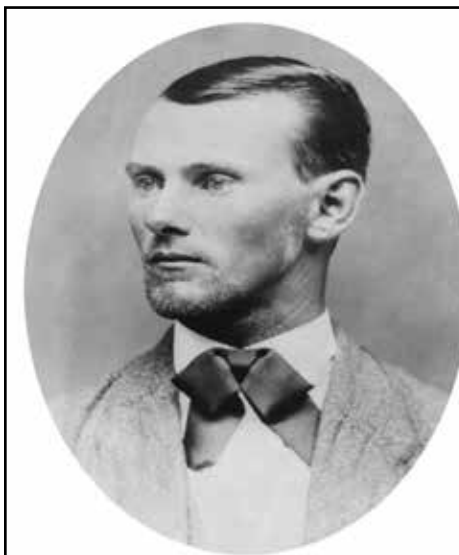
Alexander Franklin "Frank" James - older brother to legendary outlaw Jesse James

FRANK JAMES

When someone mentions outlaws, more often than not, the name Jesse James will

soon follow. His exploits and larger-than-life legend ingrained him as part of American culture. Jesse was the younger brother of Alexander Franklin "Frank" James.

The brothers, born in Missouri, would commit crimes in numerous states and



Legendary outlaw Jesse James

eventually would leave their marks on Alabama. They earned their reputations as outlaws separately, together, and as part of the notorious James-Younger gang, but not until after they served in the Civil War.

Numerous robberies, thefts, shoot-outs and other crimes have been attributed to the James brothers, but many of the crimes were actually committed by other outlaws. The reputations of the James boys made them easy targets for blame.

Legends claim the brothers robbed any number of banks in Alabama but the reality is they did not rob any.

One legend claims Jesse James robbed Huntsville's First National Bank on Sept. 7, 1876, of \$10,000. This robbery was never committed, nor was one attempted, but the legend persists.

The closest Jesse James ever came to robbing a bank in Huntsville was when he robbed the Huntington Bank in Huntington, Tenn., on Sept. 15, 1875.

While Jesse did not rob any banks in the state of Alabama, he is rumored to have

hidden out in various locations in the northern part of the state. Some of the most rumored hideout locations were near Gadsden in Etowah County, near Guntersville in Marshall County, and Mentone in DeKalb County.

Elder brother Frank also never robbed a bank in Huntsville, but he came a lot closer than Jesse did -at least according to the state's judicial system.

On March 11, 1881, a federal paymaster by the name of Alexander G. Smith was travelling from Florence to Muscle Shoals, transporting the payroll for the men digging a canal in Muscle Shoals for the U.S. Army Corps of Engineers. This payroll consisted of \$4,371 in cash, \$500 in gold, and \$419.18 in silver.

Smith was robbed by three masked men who may not have been caught if outlaw Bill Ryan had not bragged about the robbery in a bar one night. He was arrested and taken to jail in Nashville, where he implicated Frank James in the robbery.

He was not arrested, however. Jesse James would be killed that April, leading Frank to reconsider the course of his life.

In October of 1882, Frank James went to Jefferson City, Mo, for a meeting with Gov. Thomas T. Crittendon, saying: "I have been hunted for 21 years, have literally lived in the saddle, have never known a day of perfect peace. It was one long, anxious, inexorable, eternal vigil." Frank surrendered to the governor with the understanding that he would never be extradited to Minnesota to face several charges in that state.

But James was indicted on various robbery and murder charges in Gallatin, Mo., for the July 15, 1881, robbery of the Rock Island train at Winston, Mo., in which the train's engineer and a passenger were killed. He was exonerated after prosecutors were unable to provide enough evidence of his involvement. After his acquittal in Gallatin, Frank was then taken to Huntsville in March of 1884 to stand trial for the Muscle Shoals U.S. Army Corp of Engineers payroll robbery.

While in Huntsville awaiting trial, Frank was incarcerated in the Madison County

Jail, but he was far from an average prisoner. During his stay, he was almost a tourist attraction and people came from miles around to see the famous outlaw. Certain people of Huntsville society were given special access to Frank James and were able to sign him out of the jail for a few hours at a time.

James would eventually be acquitted of all charges and walked out of the Madison County courtroom a free man

He spent the next 30 years doing various jobs: he was a shoe salesman, a ticket-taker at a theater, and a telegraph operator. Near the end of his life, he supported himself and his family by giving tours of the James farm in Missouri for 25 cents. He died at his boyhood home on Feb. 18, 1915, at age 71. ■

Article originally appeared on AL.com and is re-printed by permission. Information obtained for this article comes from the book "Alabama Scoundrels: Outlaws, Pirates, Bandits and Bushwhackers."



Frank and Jesse James

PBF SCHOLARSHIPS BENEFIT RECIPIENTS YEARS AFTER AWARD

BY TOMMY SIMPSON, DIRECTOR OF ORGANIZATIONAL SERVICES – WEST REGION, SSPBA

It is a good feeling to support a charitable foundation when you know the money you have donated is being put to good use. What's even better is when you can actually see the results of your contribution.

In 2007, one of the first scholarship recipients from the Police Benevolent Foundation was Jacob Rollins from Hazen, Arkansas.

Jacob had just completed high school at the time. He was a member of the Honor Society and planned to attend college. He applied for a scholarship and, after thorough review of his application, was awarded a PBF scholarship. Jacob went on to attend the University of Central Arkansas where he graduated in 2011 with a degree in Criminal Justice and Sociology. In 2012, he became employed with the Hazen, Arkansas Police Department, where he remains today. In 2014, Jacob was awarded "Employee of the Year" by the city of Hazen. When asked what receiving the PBF scholarship meant to him, Jacob replied, "The PBF scholarship gave me financial freedom to pursue



my dreams in criminal justice. Having an organization to support me through college gave me the drive to study harder and learn as much as I could before pursuing my career in law enforcement."

One of the many important aspects of the Police Benevolent Foundation is the college scholarship program. Through the program, scholarships are awarded to

deserving young men and women, like Jacob, every year. The Police Benevolent Foundation was founded by and is administered through the Southern States Police Benevolent Association. I, like most employees of SSPBA, contribute to the foundation through payroll deduction. There is also a way for members of the PBA to contribute. It's called the "Dollar a Month Club." A member simply pledges a dollar (\$1.00) a month to the foundation and it can be paid along with their monthly membership dues (some limitations apply). You can start and stop the donation at any time. It is great knowing that as a contributor you are helping young men and women the caliber of Jacob to prepare for a career in the law enforcement profession.

Applications for scholarships can be submitted December 1st through June 1st of each year. Information regarding qualifying criteria and application submissions can be obtained online at www.pbfi.org. ■

ATTORNEY SPOTLIGHT: POLLY CHONG



Attorney Polly Chong of Newport News, Virginia has been an asset to the PBA for almost five years. Chong gladly accepts any PBA member's case because she enjoys getting to know the officers. She handles cases in a dedicated and efficient manner to assist members in need.

Chong studied and read law in Virginia and passed the bar in 1996. She primarily worked personal injury cases in various law firms before opening her own practice in 2000. She currently owns and operates one of the most successful law firms in Newport News, Virginia. Chong says, "I spend every day in court," but she loves her work. Even with a great deal of clients, Chong still finds time in her schedule to help Virginia PBA members when she gets the call.

Newport News Virginia Chapter President Dennis Pointer knew that Polly Chong was a perfect attorney for the PBA team. Pointer asked Chong to serve as a PBA attorney in 2011. "(Polly's) veracity stood out about her. She always defends her clients and treats everyone fairly," Pointer said. When asked what Chong's greatest qualities are when it comes to representing PBA members, Pointer replied, "Her integrity and her intuitiveness." Pointer definitely knew that Chong was an attorney that would be a consummate advocate for PBA members. Since Chong began dedicating her time and services to the PBA, she has handled approximately 22 cases.

Members of the PBA legal department appreciate Polly Chong's continued commitment as well. Staff Attorney Charlie Cordell says, "Polly is a valuable asset for our members in the Hampton Roads area. She is always ready to provide them with top-notch representation. She is never too busy or unavailable when an emergency arises. Her dedication and fidelity to our members is appreciated by both the legal department and our members."

Chong's favorite aspect of dedicating her time and services to PBA members include the members themselves. "I like just getting to know the officers. Every police department is different, so I get to learn to deal with different dynamics," Chong said. When asked what being chosen for an attorney spotlight meant to her, Chong replied, "It's a huge honor and a privilege."

Polly Chong's Law Office is located at 732B Thimble Shoals Boulevard, Suite 201, Newport News, VA 23606. She may also be reached by phone at (757) 599-8400.

WEST VIRGINIA MEMBER RECOVERS BACK PAY FOR K-9 CARE

BY ATTORNEY BARRY P. BECK, POWER BECK & MATZUREFF LAW OFFICES

Earlier this year, West Virginia PBA member Deputy Glen Kilmer received a \$53,000 settlement for his overtime claims against the Jefferson County, West Virginia Sheriff's Department. Deputy Kilmer was represented by SSPBA panel attorney Barry P. Beck of Martinsburg, West Virginia.

Deputy Kilmer has served as a K-9 officer with the Jefferson County Sheriff's Department since 2007. Prior to July 2012, he had not been compensated for any of the off-duty time that he spent caring for and training his K-9. In 2013, the Sheriff determined that he was entitled to back pay for his past off-duty work. At that time, the Sheriff paid him 3.5 hours of overtime per week for the period of July



2010 through June 2012. Deputy Kilmer contended that the back pay did not cover all of his past off-duty work, including the time that he spent providing basic training to his K-9 immediately after he was acquired by the County in August 2010. The

Sheriff disagreed, however, and refused to pay him any further back pay.

In August 2013, Deputy Kilmer filed suit in the United States District Court for the Northern District of West Virginia. The suit alleged that the Sheriff had violated the Fair Labor Standards Act because Deputy Kilmer was not paid overtime for all of his past off-duty work. His case went to trial in October of last year. The jury awarded him \$18,000 in back pay, and the Court awarded him another \$18,000 in statutory liquidated damages. Following the trial, the parties agreed to settle. As part of the settlement, the Sheriff agreed to pay Deputy Kilmer's attorney's fees and expenses. The SSPBA, therefore, received full reimbursement of the attorney's fees and expenses that it advanced on behalf of Deputy Kilmer. ■

LEGENDARY LAWMAN MELVIN PURVIS

BY CHARLES BENNETT, OFFICER.COM CONTRIBUTING WRITER

Lawman Melvin Purvis is most noted for the capture of John Dillinger and the less than stellar history between J. Edgar Hoover and himself. He had a law degree from the University of South Carolina and joined the Bureau in 1927. I give you Melvin Horace Purvis, Jr.

Mr. Purvis was born October 24th, 1903 in Timmonsville, South Carolina the fifth of 12 children to Melvin Purvis, Sr. and Janie Elizabeth Mims. In 1925 he received his law degree from the University of S.C. and worked for two years at Willcox and Hardee of Florence, South Carolina as a Junior Partner. After seeking out a position in the State Department as a diplomat (they weren't hiring) he answered a call from Bureau Director J. Edgar Hoover who was looking to tighten the FBI standards in 1927.

He quickly excelled in the Bureau and headed the Division of Investigation in Birmingham, Oklahoma City and Cincinnati. Hoover personally put Purvis in charge of the Chicago office following some of the most violent years in Chicago's history (Capone was sentenced November 24, 1931).

Despite his lack of performance when it came to administrative duties, Hoover took a personal interest in his career and referred to him as "Little Mel" (as did the press) due to his stature. Purvis was five foot, four inches tall and weighed in at 127 pounds. He was liked by those who worked for him and was often referred to in the press as "clam personified" because he would not comment on cases and was remarkably short with answers when he did. His dogged determination and painstaking diligence aided him in tracking down some of the most notorious criminals of the nineteen-thirties. Most notable of these was John Dillinger.

In 1933, Dillinger and his group of criminals went on a violent spree of bank robberies through Indiana, Illinois and Ohio amassing an estimated \$150,000. Having been captured while hiding out in Tucson, Arizona he was extradited to Indiana. Escaping from Crown Point prison on March 3, 1934 using a wooden gun, Dillinger stole a police cruiser and cross

Purvis was to signal his agents by lighting a cigar; unfortunately a shootout occurred that resulted in Dillinger's death. Although Purvis didn't even fire a shot he was credited as "The Man Who Got Dillinger." Purvis is also credited for the killing of Charles Arthur Floyd (a.k.a. Pretty Boy Floyd) on October 22, 1934, although there is some disagreement as to the facts of the shooting.



Melvin Purvis (left) with J. Edgar Hoover (right)

state lines. This made it a federal offense and the jurisdiction of the FBI. Hoover ordered Purvis on the case two days later and Dillinger became the FBI's Public Enemy Number 1.

Following a botched attempt at capturing Dillinger at "Little Bohemia" in Rhineland, Wisconsin Dillinger went underground. Purvis would enlist the help of Anna Sage (a friend of Dillinger's) who came to be known in the press as "the woman in red." She agreed to help the FBI to avoid deportation back to Romania (but was deported anyway). On July 22, 1934, Dillinger was setup to be arrested outside the Biograph Theater in Chicago.

Following all the media attention received from these two cases Purvis was considered a celebrity in the press. According to *The Vendetta*, a biography written by Alston Purvis (Melvin's son), he was the second most famous man in America behind President Roosevelt. All this fame didn't sit too well with Director Hoover, who always had the limelight to himself. He allegedly began to assign all the bad cases to Purvis and put him under increased scrutiny. Many believe it was this treatment that drove Melvin Purvis to resign from the FBI on July 10, 1935. During that time frame the Bureau lost several of its agents, with the attrition often attributed to Hoover's leadership.

Following his resignation from the FBI, Purvis was unable to secure a job in law enforcement due (speculatively) to Hoover's black listing him. He returned to his law practice and would marry Marie Willcox, the daughter of his former law partner. They would have three children: Melvin, Alston and Christopher. He also volunteered during World War II, serving as a Lieutenant Colonel. Even in his law practice Hoover had a hand in trying to keep him from succeeding. Hoover tried to block Purvis' nomination as special council to the Senate Judiciary Committee but his efforts failed.

Despite all the ill feelings between Purvis and the Bureau he never had a bad thing to say in public about it or Director Hoover. He would always remain faithful to the FBI. On February 29, 1960, Purvis died as the result of a gunshot wound to the head. It was originally deemed a suicide but later accounts deemed it to have been accidental as he was trying to clear a tracer round that had lodged in the barrel. There was no note left and he gave no indication that he would commit suicide. The final word was sent to Hoover by the Purvis family after his death. Hoover did not attend the funeral or send condolences. Marie Purvis wrote, "We are honored that you ignored Melvin's death. Your jealousy hurt him very much but until the end I think he loved you." 🖤

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RALEIGH CHAPTER MEMBER JOHN MATTHEW "MATT" MIDGETTE AWARDED THE RALEIGH PD'S DISTINGUISHED SERVICE MEDAL

BY RANDY BYRD, NCPBA DIVISION PRESIDENT

The Raleigh Police Department has awarded its Distinguished Service Medal for Bravery to John Matthew "Matt" Midgette.

Midgette, an officer since April 2010, was honored on May 21, 2015, with a ceremony for his bravery. Matt was a first responder to an apartment fire, subsequently saving 10 lives.

The ceremony was held at the PNC Arena. The 8th Annual Department Awards Ceremony was started by former Raleigh Police Chief Harry Dolan, who was a member of the original Raleigh PBA local chapter in 1986.

The following is an excerpt from the actual presentation to Matt and other officers.

"On March 23, 2014, a fire call came in to dispatch to 611 Peyton St. A further update from communications revealed that residents were jumping from their apartments to escape the flames. Officer Midgette was first to arrive at the scene and noticed that flames were coming from the upper part of the building. He then made entry. Several minutes later other



L-R - Allison Midgette, Adam Midgette, John Matthew "Matt" Midgette and Christopher Midgette

officers arrived and entered the building to assist Officer Midgette in clearing the second and third floors.

With the assistance of a ladder obtained from a civilian, the officers were able to make a makeshift escape route for five stranded tenants that were found trapped on the third floor. After the building was cleared, the officers were able to safely

exit the building. A total of 10 tenants were transported to Wake Medical Center with various injuries, including smoke inhalation.

These officers distinguished themselves with an act of bravery at the risk to their own personal safety and performed above and beyond the call of duty." 🖤

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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 an accidental, non-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.



NRA

NATIONAL RIFLE ASSOCIATION

SHOULDER TO SHOULDER WITH LAW ENFORCEMENT SINCE 1871

Critics don't define our honor. They try to shame us for doing our job. They teach children to fear us, crowds to attack us, and good people to doubt us. But we will never back down from our sworn duty to uphold the Constitution of the United States of America.

We wake up every day, put on our badge, strap a gun to our hips, kiss our families goodbye, and put our lives between the law-abiding and any criminal who threatens their rights.

We are Americans and we are the American police. We stand with the National Rifle Association of America and the NRA stands with us.

**TOGETHER, WE ARE
FREEDOM'S SAFEST PLACE.**

SHERIFF DAVID A. CLARKE