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**FACTORS IN LEADER  
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Greg Veitch  
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**GORDON GRAHAM:**  
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*Constitutional  
Violation?*

**NEW YORK STATE ASSOCIATION OF CHIEFS OF POLICE, INC.**

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**JUNE 2024**

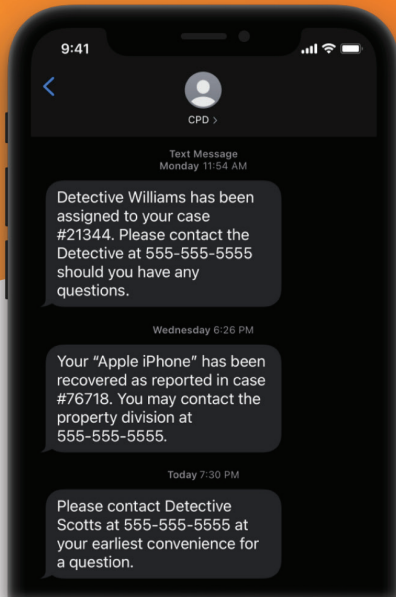
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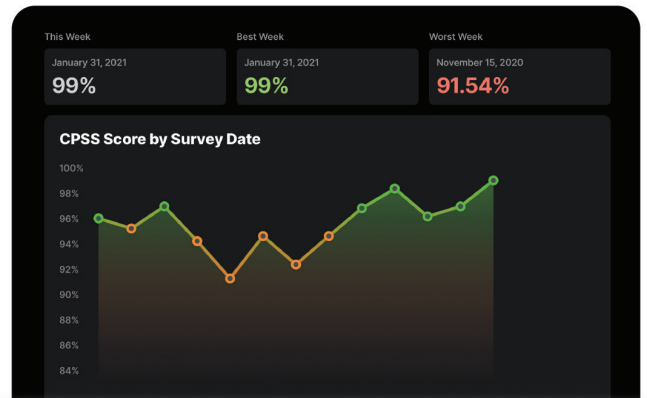
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CHIEF (RET.) GREECE PD

*Traffic Safety Services*

*Coordinator GTSC Liason*

CHIEF (RET.) DANIEL DENZ

*Treasurer*

**STEPHEN CONNER**  
MTA ASSISTANT CHIEF (RET.)

*Art Director/Editor*

**DORIS BOVÉ ARESTA**

dbaresta@nychiefs.org

*Traffic Safety Outreach Liaison*

ASST. CHIEF (RET.) WILLIAM GEORGES

CHIEF (RET.) MICHAEL N. GERACI

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# FROM THE PRESIDENT

*President*  
**Chief Shawn Heubusch**



## National Night Out and the Positive Impact on Community-Police Relations

**L**ike many of you reading this, we are preparing our agencies for the summer uptick in crime and skyrocketing calls for service that come with the nicer weather. We are checking off training that we have pushed into the spring and summer months as well as gearing up for the numerous events that we are part of or have been directed to coordinate and secure. One of the most significant and, in my opinion, important events held each summer is the event known nationwide as National Night Out (NNO). In today's society, the relationship between law enforcement and the communities we serve often garners significant attention. With headlines frequently highlighting instances of tension or discord, it's easy to overlook the many positive interactions and initiatives that contribute to fostering mutual respect and understanding. NNO is a celebration that not only brings communities together but also strengthens the bond between our agencies and the people we protect.

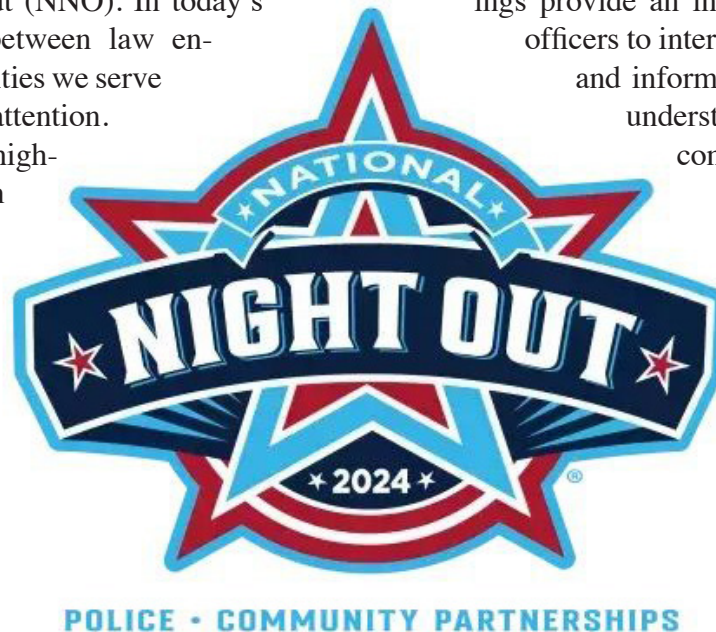
National Night Out, observed annually on the first Tuesday in August, originated in 1984 as an effort to promote police-community partnerships and neighborhood camaraderie. Since then, it has grown into a nationwide event, with millions of participants across

thousands of communities in the United States. The core aim remains unchanged: to enhance the relationship between residents and law enforcement, making neighborhoods safer and more caring places to live.

At the heart of National Night Out are block parties, cookouts, parades, and various community events where neighbors come together to socialize and engage with local law enforcement agencies. These gatherings provide an invaluable opportunity for our officers to interact with residents in a relaxed and informal setting, fostering trust and understanding. Through face-to-face conversations and shared activities, stereotypes and misconceptions are often dispelled, replaced by a sense of solidarity and cooperation.

One of the key benefits of National Night Out is its ability to humanize our law enforcement officers to the public they are entrusted to serve and protect. In far too many communities, police officers

are seen only as authority figures who are only encountered during emergencies or law enforcement actions. However, events like NNO allow residents to interact with officers on a personal level, discovering common interests and shared concerns. These interactions make our officers more approachable and relatable figures



within the community.

National Night Out provides an opportunity for our agencies to showcase their commitment to community policing. By actively participating in these events, officers demonstrate that they are not just enforcers of the law but also partners in building safer and more vibrant communities. From organizing fun activities for children to hosting informative workshops on crime prevention, NNO is a platform to engage with residents and address their needs proactively.


Beyond the immediate impact of National Night Out events, the positive effects on community-police relations are often long-lasting. Strengthening our bonds between residents and our departments, which can lead to increased cooperation in crime prevention efforts. Moreover, when residents trust and respect our police officers, they are more likely to support our initiatives and



work collaboratively to address community challenges.

While National Night Out shines a spotlight on the positive aspects of community-police relations, it is just one piece of the larger puzzle. Sustaining a healthy relationship between our agencies and the community requires ongoing efforts. This includes transparent communication, accountability, and a commitment to addressing issues that may undermine the community's trust in us.

Whether you officially participate in National Night Out or have developed your own program over the years, these events serve as a powerful reminder of the potential for positive interactions between our agencies and the communities we serve. By bringing residents and officers together in a spirit of unity and celebration they strengthen the bonds of trust and cooperation that are essential for building safer and more resilient communities.



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# FROM THE EXECUTIVE DIRECTOR

## Chief/Ret. Patrick Phelan

### Why Should I go to the NYSACOP Conference?

I was a police chief. I was a Chief in one of the largest towns in New York. A mid size agency. I understand the demands on your time. It never ends. Crime issues, community problems, labor issues, employee discipline, policies and procedures, union issues, appeasing politicians, rinse, repeat. It seems that the demands on your time never come to an end. At times, the idea of being away from the office for an extended period of time seems like an impossible task. I will confess the entire time I was a chief I never took a full week vacation because I was too worried about what would be waiting for me when I returned. So, the idea of attending a training conference can be a challenge. "I can't afford the time away from the office." I am here to tell you that you cannot afford to miss the conference.

**Training** – Police Chiefs need training, like anyone else. We utilize our unique network of police chiefs to determine what topics and most valuable to New York Chiefs and locate presenters. We offer the most topical, mission appropriate training in the state. You will learn something you do not know that will help you better do your job. Our core mission is of course training, we take it very seriously.

**Networking** – Our conferences offer unique opportunities to network with chiefs and executive from all over New York State. The contacts that you generate from these events are invaluable resources. This oppor-

tunity to meet chiefs from other parts of the state and share information and experiences is worth its weight in gold. I can tell you that the network I developed through the New York State Association of Chiefs of Police was my greatest asset as a chief.

**Purchasing** – we put on the best vendor exhibition in the state. Our partners and exhibitors display products that you need and use. You can talk to our exhibitors in an unthreatening environment and maximize your purchasing budget. Our exhibitors will not pester you with emails when you return to the office. You can talk directly to the product representative in person, ask questions, and get the best price. It is a win – win.

**Unwind** – We all know that with each promotion you leave the party one hour earlier, when you make it to chief you don't get invited to the party anymore. If you go out to a restaurant in your hometown, all eyes are on you. At our conference everybody is somebody. You can relax because we are all chiefs, no one is judging you. It is good for your mental health to experience that feeling occasionally.

**It's only three days** – We start our conference on a weekend and end it mid-day on Wednesday for a reason, so you do not have to be away from the office for an entire week. Three days and you can be back at the office Wednesday afternoon. If you cannot be away from your department for three days, you should take

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 Register: Click here to Register for NYSACOP Conference

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a look at your operation and make some changes. You should be able to leave for three days.

**Here are some of the conference highlights;**

- Nick Bruel, NLEOMF — Line of Duty Deaths — In depth study of line of duty deaths
- Mark Anderko Deputy Chief (Ret) Edison, NJ Police Burning Down the House – A Leadership Journey Through Change
- Dr. Bobby Newman — Autism Awareness
- Installation Dinner
- Hospitality Room
- Mike Ranalli , Chief (Ret) Glenville Police The Interplay of Case Law, Training, and Organizational Culture
- John Riegert , DCJS — Crime Analysis Centers
- John Bostain National professional speaker on leadership
- Steve Chatterton Captain (Ret) Greece Police School Safety – know your liability
- Happy Hour 500 Pearl Rooftop Restaurant
- Hospitality Room
- Matthew Seifert, USBP Chilean and Venezuelan Gangs

I cannot recommend the conference highly enough, the training, networking, purchasing, and fellowship add up to time well spent and I was always a better chief when I left.

There is still time to register for the conference and book a hotel room using the links below.

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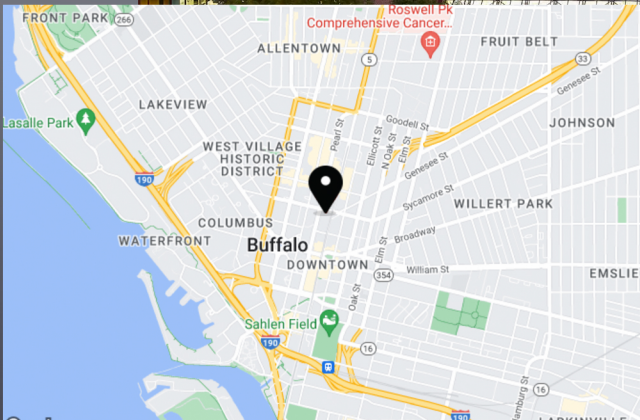
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# NYSACOP TRAINING CONFERENCE 2024



**JULY 14-17, 2024  
BUFFALO, NY**

# CHIEF'S CORNER

Cover Story

## Evolving Terminology: Navigating Diverse Threats in Contemporary Law Enforcement



The term active shooter came into the law enforcement lexicon after the Columbine High School attack in 1999. Clearly Columbine was not the first incident that involved an individual with a firearm randomly targeting people for death, but for many people it is considered a watershed event which triggered widespread action. Active shooter type attacks had occurred prior to Columbine in many venues, including postal facilities, restaurants and on college campuses. In fact, the commonly used expression, going postal, came about after a series of shootings perpetrated by postal workers starting in the mid-1980s. These attacks targeted fellow postal service employees, police officers and members of the general public.

What was unique about the columbine attack, at the time that it occurred, was the extensive, real-time media coverage that it garnered, with viewers riveted to their television sets as law enforcement responded to the incident on live TV. Providing a name to this phenomenon helped frame the issue and may have been a useful impetus to spur the development of law enforcement countermeasures to combat active shooter attacks. The paramount law enforcement concern in addressing these attacks is the immediacy with which tactical interventions must be applied. Regarding active shooter incidents, sec-

onds truly do mean lives and help can't arrive quickly enough, especially for the victims.

The necessity for rapid action has largely negated the use of special weapons and tactics teams as a principal antidote to the problem. As a result, immediate action rapid deployment training was developed to respond to these incidents. This training was focused largely on non-specialized patrol officers who would likely be first on the scene. The initial active shooter response training models taught the use of teams of four officers; however, the increasing need for a faster response by law enforcement to combat even more prolific attacks has resulted in training models that now teach response using teams of two officers or even single officer deployments.



Many prospective active shooters research prior attacks with a goal of outdoing previous attackers by creating a higher casualty count. As a result, as attacks have evolved, shooters have used assault rifles, large capacity magazines (including drum style magazines) and bump stock devices to emulate fully automatic gunfire. There is little doubt that some of these actions are motivated by law enforcement becoming better equipped to rapidly act, thereby narrowing the amount of time available to harm people.

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The term active shooter is somewhat amorphous in that it means different things to different people. There are a wide variety of definitions for the term currently in use. Clearly, active shooters are individuals who have the desire to kill numerous people and have acquired the means to act. Often the victims that they select have no prior affiliation with the killers and appear to be chosen in a random and indiscriminate manner. Many common definitions mention that once active shooters begin their attack, they will continue to kill people until they are stopped, or they run out of potential victims or ammunition.

Spree killers and mass murderers are closely related terms. Spree killers are generally defined as in-



dividuals or groups of individuals who kill two or more people in more than one location without a cooling-off period in between. The lack of a cooling-off period is the main factor that differentiates spree killers from serial killers, who also kill multiple people but do so over a more extended period of time.

Mass murderers, on the other hand, are generally defined as individuals who kill multiple people during

a single event, all in one location. The number of people who must be killed during a single event to qualify someone as a mass murderer varies depending upon which definition is applied. The most frequently applied mass murder definitions require the killing of three to four people at one time.

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Accordingly, an active shooter could also be either a spree killer or a mass murderer or may be neither. Active shooters have killed people in one location, and they have also gone mobile, killing people in several locations. Some active shooters have been stopped by potential victims or law enforcement when it was clear that they intended to harm additional people. Attackers have been stopped while they still possessed large amounts of unused ammunition and still had access to potential victims. Therefore, under certain definitions an active shooter may not fulfill the requirements to be either a mass murderer or a spree killer, despite their intentions to do so.



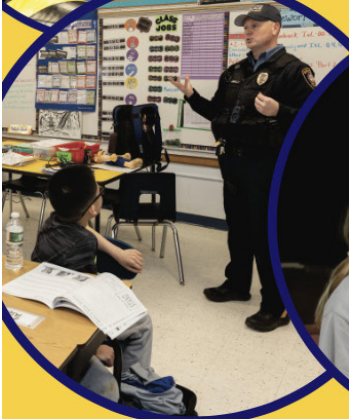
An active shooter intent on becoming a mass murderer may serendipitously fail to achieve that status simply because of a speedy response from law enforcement or from the armed intervention of one of the intended victims that expeditiously stops the attack, thereby thwarting the attacker's plans. Mass murderers and spree killers who target specific people and then cease their attacks once their object has been achieved would not generally fit into most active shooter definitions, nor would those who inadvertently hit innocent people, such as during a gang-related drive-by shooting.

Various motivations exist for mass murder or spree killing, including gang or

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domestic violence issues. In these cases, the victims are specifically targeted without the random selection of additional victims. Therefore, these killers would not be considered active shooters under most accepted definitions. One of the key attributes of an active shooter attack is the seemingly indiscriminate and random choice of victims. When victims are individually targeted, there may be less resultant anxiety in the public since they don't feel that their own safety has really been compromised as they are not a part of this targeted group. For example, not being a member of a family group or gang that was specifically attacked.

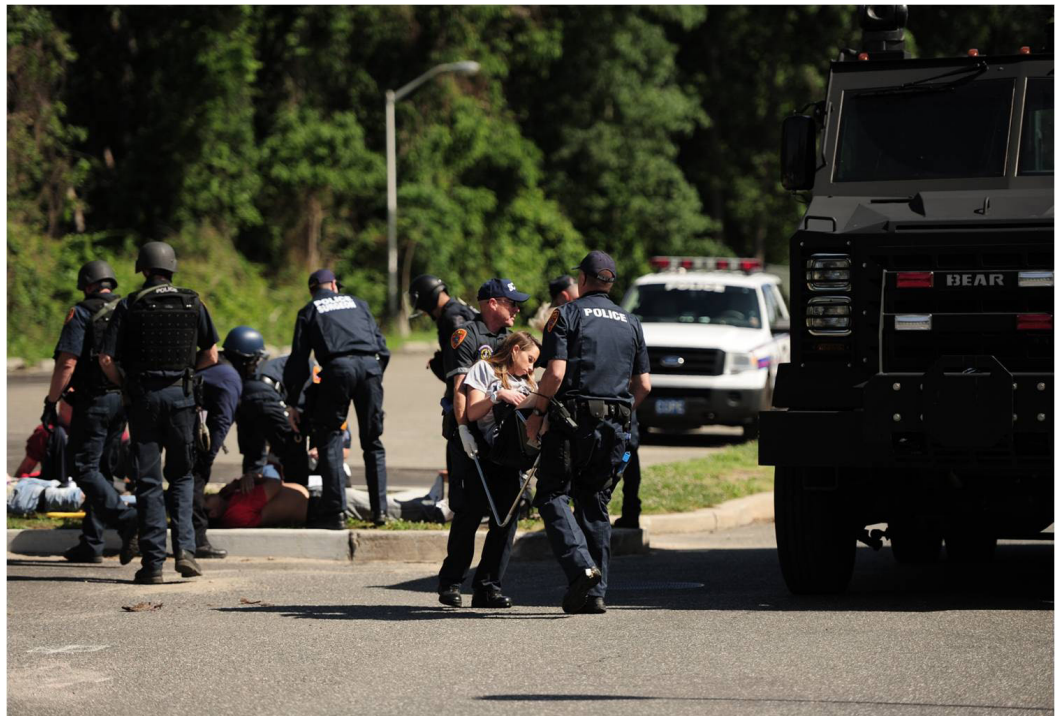
Conversely, much greater angst is caused among the public when an attack occurs, and people are randomly targeted simply for being present at the attack venue at the wrong time. Citizens feel the greatest amount of concern when they view the victims of an attack as representative of themselves, their families, or their friends. This factor can help to explain why the number of casualties alone may not be directly related to the amount of media coverage that a given event generates.

Some law enforcement agencies have now abandoned the term active shooter and have instead adopted other titles, such as active killer, to reflect the use of alternative weapons in random mass killings. One of the deadliest mass killings in Japan since World War II was perpetrated with a knife in July 2016. Attackers in China have used knives, meat cleavers, and hammers to randomly target victims in a variety of public locations. Attackers have used knives in the United States as well, both as the sole means of attack and in combination with firearms.

Symphonic, or multifaceted, attacks utilizing multiple means of killing have also occurred. For example, a May 2014 attack in Isla Vista, California, involved stabbings, shootings, and vehicle ramming, all employed by a single individual to kill six people and injure several others. Terror groups have utilized

the symphonic attack method employing multiple attackers with alarming success in locations such as Mumbai, India, and Paris, France. Terror groups have employed tactics that would fit into most common definitions of an active shooter attack supplemented by other means, such as explosives, vehicle ramming and even fire used as a weapon.

A variety of terrorist groups have advocated what essentially amounts to asymmetrical warfare, attempting to inspire followers to utilize any method available to kill people. This attack rhetoric has been



successful in motivating individuals to act. Terrorist publications also have been effective in providing explicit guidelines on how to proceed. Calls to act utilizing whatever means are readily available have been frighteningly effective. In July 2016, one of the worst mass murders executed by a single person occurred in Nice, France, exceeding the death toll of any prior lone active shooter. All evidence points to the fact that the attacker's goal was the same as most active shooters; to kill as many people as possible until stopped. This attacker's primary weapon was a large rental truck which was used to run over pedestrians at a Bastille Day celebration, supplemented by a firearm.

In November 2016, a student at Ohio State University used a small automobile to run down other

students on campus. He continued his attack by stabbing people after exiting the motor vehicle. Several similar attacks have occurred in Israel. Clearly, one could make a cogent argument that referring to this type of attack as an active shooter may be somewhat misleading.

The tactics required to end these assaults may differ from one involving an active shooter, especially if the law enforcement response occurs while the assailant is still behind the wheel of the car running people down. The necessity for a rapid response is still critical, as is the need to neutralize the attacker; however, stopping an assailant who is running people over may require different skills, tactics and equipment than halting an active shooter who is killing people only with a firearm. Many law enforcement policies prohibit officers from shooting at a moving vehicle which could further complicate the response to an attack where in the vehicle is the weapon.

Active killers seem to be motivated to randomly target people using whatever means are available to them, even if it ultimately results in the attacker's demise. This premise might allow one to include among active killer attacks events such as the Germanwings mass killing in March 2015. During this incident, the copilot on a commercial flight locked the pilot out of the cockpit and intentionally flew the plane into a mountain, killing all 150 people on board the plane. Shockingly, the Germanwings mass killing is but one of several incidents wherein a member of the flight crew intentionally crashed a commercial aircraft to kill everyone on board the plane. In another example, the NTSB determined that Egypt Air Flight 990 was intentionally flown into the ocean by the relief first officer when he was left alone in the cockpit killing all 217 people on board. The FAA does require that

there always be two crew members in the cockpit, so it would be much more difficult for an attack of this nature to occur on an American commercial flight.

Obviously, local law enforcement would have no ability to prevent or mitigate an attack in flight on a commercial airliner; however, these events do highlight the extreme range of means that can be employed by those bent on suicide and random mass killing. Given the wide variety of attack modalities available to those with an active killer mindset and the increasingly prevalent rhetoric encouraging these types of attacks, should law enforcement agencies modify existing active shooter training and procedures? Should agencies reconsider the use of the term active shooter, potentially adopting a new vernacular that acknowledges the broad range of attack methods available to those with the active killer mindset?



Despite many naysayers who were initially skeptical that rapid deployment tactics would be effective during active shooter attacks, due to the rapid pace at which these events unfold, it is quite clear that these tactics have saved the lives of innocent people who may otherwise have become victims had law

Enforcement not mounted an effective response. Law enforcement agencies must actively monitor the evolution of attack methods and modify their training, procedures, and equipment acquisitions to keep pace with our adversaries, regardless of the label given to the attack strategy. For the potential victims facing death at the hands of someone bent on a mass killing spree, it is immaterial if the weapon utilized in the attack is a firearm, a knife, or a vehicle. What is critical is a rapid, well-orchestrated and effective response from law enforcement.

# COUNSEL'S CORNER

**Chief/Ret. Michael Ranalli, Esq.**  
**LEXIPOL PROGRAM MANAGER**



## *Constitutional Violation? Use of Force Case Law Rarely Provides Easy Answers*

I recently hosted a Lexipol webinar entitled Interpreting and Understanding Case Law: Implications in Police Use of Force.<sup>1</sup> This was part one of a two-part series, with the second part, Identifying Trends in Use of Force Case Law, scheduled for June 13, 2024.<sup>2</sup> The first webinar builds a foundation for understanding case law, while the second will address some trends in use of force cases that can impact law enforcement policy and training. While many officers will likely be most interested in the second part, the first part is the most important. Understanding how to interpret case law is what will allow officers to better understand the impact, if any, of cases on them long after the webinars are completed.

As I always do after my webinars, I reviewed the questions and comments posted by attendees. One comment gave me pause: “I want my agency to be able to evaluate a use of force and determine if it was a violation of the Constitution.” This statement confirmed exactly why I felt these webinars were necessary.

If I could teach officers to evaluate whether a use of force violates the Constitution in one webinar, or in

10 webinars, I would be a rich man. As I emphasized in the webinar, under the *Graham v. Connor*<sup>3</sup> objective reasonableness standard, the validity of an application of force is determined by a careful analysis of the facts on a case-by-case basis. In other words, every case is potentially different because of its unique facts. Add to that the application of the complicated and potentially confusing law pertaining to qualified immunity, and it becomes extremely difficult to know what is or is not a legal police action. Yes, a careful study of cases can reveal certain categories or types of police actions that are prohibited by clearly established law. This will be the focus of the second webinar. But this still leads to a factual analysis of every case.

If it is so difficult to determine whether force would or would not violate the Constitution, what are the police to do?

### **Qualified Immunity Under Federal Law**

Police officers may be entitled to qualified immunity in a Section 42 U.S.C. § 1983 action. Qualified immunity was created through case law in recognition of





the fact that public servants need to be able to make discretionary decisions without the constant fear of liability for civil damages.

There are two parts to the qualified immunity analysis:

1. Did an officer's conduct violate a statutory or constitutional right?

2. If yes, was that right clearly established?<sup>4</sup>

A subsequent case<sup>5</sup> clarified that this is not a rigid two-step process. Courts do not need to first determine whether the facts alleged by the plaintiff amount to a violation of a constitutional right. Instead, they can just make the determination as to whether that right was "clearly established." What is clearly established can be



elusive and complicated, but as the Supreme Court of the United States once reasoned, "Use of excessive force is an area of the law 'in which the result depends very much on the facts of each case,' and thus police officers are entitled to qualified immunity unless existing precedent 'squarely governs' the specific facts at issue."<sup>6</sup>

The issue of whether qualified immunity applies is typically addressed during a motion for summary judgment. In such cases the moving party is typically the municipality and/or the officer(s).

Officers must understand a critical point about how the qualified immunity issue is decided: In determining whether officer conduct violated a constitutional right,

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a court must analyze the facts in a light most favorable to the non-moving party (typically the plaintiff), unless there is evidence to the contrary. Body camera video or other video evidence is one way the courts can deviate from the allegations of the plaintiff.

Is everything crystal clear at this point? I know what some of you are thinking: We are still no closer to understanding how officers can use case law to guide their behavior. But understanding some basics about qualified immunity is foundational to this understanding because many use of force cases involve qualified immunity.

### Qualified Immunity Applied

To determine whether a particular use of force is a constitutional violation, officers must look at how qualified immunity is applied in specific cases. This will take a careful reading of how the court analyzes the facts and the applicable law.

**Some of the common scenarios we see in case law include:**

- The court grants qualified immunity because the law was not clearly established. Thus, the court avoids determining whether the underlying facts rose to a constitutional violation. In these cases, there is not much to apply to other scenarios. Sure, if those exact same facts were to happen to you in the future, and that case was controlling in your jurisdiction, then you would know you did not violate clearly established law. But does that really give you any benefit? Is it likely that the exact same facts would happen again?
- The court denies qualified immunity because there is a genuine issue of fact as to whether the actions of the officers amounted to a constitutional violation and there is sufficient evidence for a jury to reasonably find for the plaintiff. This may or may not apply to other scenarios. The court isn't necessarily ruling the officers did anything wrong; it is sometimes simply leaving the issue in the hands of a potential jury because the facts are subject to varying interpretation. But this scenario is where a careful reading of how the court reviews the facts is important. In some cases, the tone of the de-

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cision makes clear how the court would likely rule if it were up to them instead of a jury – which can then apply to other scenarios.

- The court ruled there is no genuine issue of fact, and the officer’s actions did amount to a constitutional violation. The remaining question is whether the actions violated a clearly established constitutional right. If yes, qualified immunity is denied. If not, qualified immunity is granted<sup>7</sup>. When a court rules that the officer’s actions violated clearly established law, now you need to pay attention! Especially if that decision is binding in your jurisdiction<sup>8</sup>. Once again, however, you need to pay close attention to the reasoning of the case to determine what actions crossed the line.

The last scenario is the only one that gives any definitive answers about what specific police actions under specific sets of circumstances are clearly deemed to be constitutional violations. But what about all the other categories of cases? What value are they to the police since they do not give definitive rules?

This is where we need to change the paradigm about how we look at use of force cases. Instead of looking for quick, definitive answers that may not exist, we must dig deeper into all the above categories of cases and try to figure out where things went wrong. We must ask, what do we want our officers to do in a similar situation? In cases that need to go before a jury, what happened in the facts of the case that led the court to determine whether a jury, and not the court, should decide?

Such case law analysis requires effort and patience, but it may provide valuable training material, even when the courts have failed to provide black-and-white directives on officers’ specific actions.

### **A Tragic Case of Swatting**

Let’s look at an example using a case involving what has become a disturbing trend – swatting<sup>9</sup>. The case I

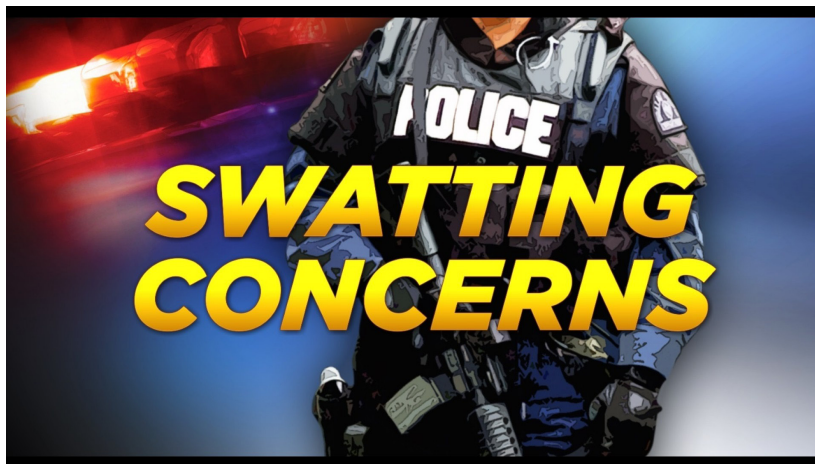
chose for this example, *Finch v. Rapp*,<sup>10</sup> contains many of the elements described so far in this article.

One quick general aside: While cases that come from the Supreme Court or the federal courts of appeals are preferable and the result controlling, sometimes lower court cases may contain a more detailed review of the facts of the case. In the *Finch* case, the district court did an extensive review of the facts of the case. This can be valuable for the purposes of learning where things may have gone wrong and what things went right.

The case starts in a different state from where the incident occurred. Two people playing an online game of *Call of Duty* got into a dispute. Gamer #1 asked where Gamer #2 was located, and Gamer #2 gave a bogus address in a city in an entirely different state. The people living at that address had nothing to do with the game or the dispute.

Gamer #1 recruited a man known for swatting to “swat” Gamer #2 at what he thought was the right address. This led to a very convincing 911 call in which the caller gave the address given during the dispute. He told a dispatcher he had shot his father in the head and was holding his mother and brother at gunpoint. He also indicated he had poured gasoline around the house and would set it on fire if the police came in.

Officers responded and the sergeant on the scene started directing officers and coordinating the response. One officer was positioned in the front of the house with a long rifle, and others were on differing sides of the house, although some ended up in an apparent crossfire per the available body cam video. Shortly after the officers began to position themselves, a 28-year-old resident, Andrew Finch, stepped out onto the front porch. Immediately multiple officers began yelling conflicting commands and within 10 seconds the officer with the rifle fired one round, striking Finch in the chest. He fell backwards into the house and died within



minutes; he was unarmed. The officers then quickly determined there was no emergency at the home.

The district court ruled the circumstances of the incident, including the inconsistent testimony of the officers, created a genuine issue of fact for a jury to consider. As summarized by the 10th Circuit Court of Appeals:

The district court concluded a reasonable jury could find: (1) Finch was confused but attempted to comply with officers' commands and his movements did not indicate hostile or threatening action; (2) persons yelling at Finch were not immediately recognizable as police; (3) Finch simply moved his arms when officers were giving him multiple commands; (4) Finch's movements did not suggest he was attempting to draw a firearm; (5) Finch was never told to keep his hands up in the air or that he would be shot; (6) an officer could see Finch was not actively resisting commands; and (7) Rapp was unaware Finch was attempting to go back into the house when Finch was shot.<sup>11</sup>

This answers one of the questions in a qualified immunity analysis: A reasonable jury could find that the officer who shot Finch violated a constitutional right by shooting an unarmed man. The next question then becomes, was it clearly established that an officer, even when responding to a dangerous reported situation, may not shoot an unarmed and unthreatening suspect? Both the district court and the appellate court found this was clearly established at the time of the shooting.

Remember that during a motion for summary judgment such as this one, the court must look at the facts most favorable to the plaintiff. As frequently happens after a municipality loses at summary judgment, the parties settled the case for \$5 million. As a result, we will never know what a jury would have ruled. But a careful reading of both the district and the appeals court rulings sheds light on training issues that may help prevent future tragedies, including:

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structed identification and not immediately apparent as officers. Light shining at Finch and the residence caused him to squint and could have made it difficult for him to see.

Multiple officers were yelling loud and conflicting commands and any movement Finch made may have been because of one of those commands. The officers themselves could not hear who was yelling what.

Finch appeared to be startled by all the activity and the available video could have led a jury to believe he was confused and attempting to comply with commands.

This is valuable information and should be integrated into scenario-based training. We train on consistent procedures in high-risk incidents (e.g., shining lights in the eyes of a person, yelling commands), but do we discuss or consider the perspective of the person on which we use such tactics? We know we are police officers, but do we train enough on ensuring we effectively identify ourselves?



Conflicting commands given by multiple officers is another important consideration; it's one of the trends I am seeing used against officers in use of force cases. If single, clear commands are given, a court is more likely to side with officers when a person ignores those clear commands. The necessary discipline to give single origin, clear commands in a high-risk, volatile situation requires frequent training. Finally, swatting incidents continue to happen with alarming frequency. The possibility that any call could be a hoax needs to be openly addressed in training and considered as a possibility during response to dangerous incidents. Dispatchers should be on alert for signs of a swatting call, such as the caller's lack of knowledge about details of the incident location. And tactical officers should, when possible, compare information from dispatch with what they're observing in person.

## A Lot to Learn

Finch v. Rapp serves as a clear illustration that, while we will now never know whether the officers' actions amounted to a constitutional violation, there is still much to learn from it and other cases like it. Such incidents can be very frustrating to officers. The officers were thrown into this high-stress situation by the criminal and despicable acts of other persons. An innocent life is lost, and the officers' lives are changed forever.<sup>12</sup> But officers must look at this and all cases objectively, without emotion, if we are to learn and prepare for the next incident.

<sup>1</sup> Available for on-demand viewing at <https://info.lexipol.com/webinar-case-law-implications-in-police-use-of-force> <sup>2</sup> Registration and on-demand viewing after June 13 available at <https://info.lexipol.com/webinar-identifying-trends-in-police-use-of-force> <sup>3</sup> 490 U.S. 386 (1989) <sup>4</sup> Harlow v. Fitzgerald, 457 U.S. 800 (1982) <sup>5</sup> Pearson v. Callahan, 555 U.S. 223 (2009) <sup>6</sup> Kisela v. Hughes, 584 U.S. 100, 104 (2018) <sup>7</sup> For a good example of

this result, see the case of *Armstrong v. Pinehurst*, 810 F.3d 892 (4th Cir. 2015) <sup>8</sup> For assistance in determining what may be binding versus persuasive case law, please review my first webinar on *Interpreting and Understanding Case Law*. It is too comprehensive an issue to address in the confines of this article. <sup>9</sup> "Swatting" is derived from falsely reported incidents where SWAT teams would typically respond such as serious crimes or hostage situations or active shooter cases. <sup>10</sup> *Finch v. Rapp*, 38 F.4th 1234 (10th Cir. 2022) and the district court case, which I suggest be reviewed as well as the circuit court case at *Finch v. City of Wichita, Kansas* (UNPUBLISHED) (2020 WL 3403121) (Dist. Ct. D. Kansas 2020). Not all cases are published in an official reporter. If a case does not break new ground or deviate from established legal principles, it is not published in an official court reporter and generally does not have precedential value. <sup>11</sup> *Finch v. Rapp*, 38 F.4th at 1246 (note 1). <sup>12</sup> For what it is worth, the swatter is serving 20 years in federal prison and the person who recruited him served 15 months.



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# Post Traumatic Stress Effects

By Lawrence Eggert, Director of the Niagara County Crime Analysis Center,  
Retired Chief Lockport NY

**O**pOverwatch is a Law Enforcement Trauma Resiliency Ministry seeking to normalize trauma's effect, and walk through it as a community. The Post Traumatic Stress effects of trauma on an officer and combat vet are normal reactions to abnormal life circumstances. At OpOverwatch, we understand the benefits of normalizing the body's response to trauma and understanding that it is not a disorder.

We approach trauma resiliency through four strategic paths: **Benevolence, Outreach, Edification, and Training.**

Benevolence is the opportunity to care for, and love on, officers as individuals and entire departments. For example, each December we reach officers who've encountered severe trauma with the OpOverwatch "Shop for a Cop" program. To date we have provided 140 "Shop for a Cop" baskets. We also reach entire departments with OpOverwatch Benevolence Packages, of which over 1500 have been provided since 2020. Throughout the year, we provide comfort & care packages to individual officers who've been through severe trauma. We also provide much needed rest amidst chaos, by way of meals for officers who've been severely injured on duty.

Throughout the year, we plan and host events for law enforcement that are completely free for them and their families. We create environments by which peer relationships can be built. These outreach events are designed around food, family, and fun, as well as times when encouraging testimonies are shared from fellow officers. A few most notable annual events include OpOverwatch Fall Festival in September, Christmas Night

in The Corral, and the OpOverwatch Craft Show every Spring. More events to come...you can be added to our private OpOverwatch event contact list by sending your name, dept, and cell # to [opoverwatchministry@gmail.com](mailto:opoverwatchministry@gmail.com)

Edification is the Biblical and Christ centered portion of the ministry. This is available to any officers who desires to know more about faith In Jesus Christ. We believe that a growing knowledge of Christ, through Biblical Truth, is the foundation of true hope, and peace, for an officer. OpOverwatch participants can choose to engage in a variety of edifying activities that center on an understanding of a Biblical world view, and the transformational power of knowing Jesus Christ.



The Center Church is an off shoot of OpOverwatch. We meet every Sunday at 10am to study The Word of Truth. Our community is made up of many active/retired LEOs, and supportive community. **We also offer a Bible Study just for law enforcement every other Friday. You can check our website [opoverwatch.org](http://opoverwatch.org) for the next meeting date,**

**and all other edification opportunities.** We aspire to provide guidance to any officers and families seeking to grow in the knowledge of Jesus Christ. The identity of a law enforcement officer can easily be consumed by their badge. We want officers to know that there is a more transcendent identity, sourced in God. We strive to minister to all those who wear the badge and share the truth about identity, purpose and hope found in Christ.

OpOverwatch leadership has years of classroom experience and field service experience to law enforcement. We are always available to offer briefings in understanding trauma's effects and trauma resiliency, as



well as guide departments through an OpOverwatch Trauma Restructure (OTR). Every Wednesday we run our OTRs. These are extremely relevant and raw conversations amongst officers, combat vets, corrections, and dispatch, with the goal of normalizing trauma's effects, and walking through it together. Check out [OpOverwatch.org](http://OpOverwatch.org) for the next date and time.

In February of this year, we had our first OpOverwatch Banquet at the Hamburg Fairgrounds. The event was free for anyone who was interested in coming to learn more about OpOverwatch and our mission. We sold out 300 seats and had to add seats for some additional guests. The OpOverwatch law enforcement simulator was on location, in order for the public to better understand the experience of an officer in high-stress, snap decision, situations.

Executive Director Dave Budz gave a presentation about trauma's impact on an officer and family, and the OpOverwatch approach to trauma. Officer testimonial videos were peppered throughout the presentation. The videos are on our website under the "About" tab. Following the presentation, guests had the opportunity to become financial investors in the OpOverwatch mission. It was an incredibly fun night to remember! We look forward to another banquet in the years to come.

If you are a part of the OpOverwatch community, we want to say thank you! Thank you for your support, your friendship, your service, and your prayers. Those interested in further involvement, check out [opoverwatch.org](http://opoverwatch.org) where you can learn how to plug in physically and financially.



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## INTERSECTIONS

# Traffic Safety Committee

**Bill Georges, A/Chief (ret.) Albany PD**

*Chair, NYSACOP Traffic Safety Committee  
NYSACOP Traffic Safety Outreach Liaison*

## Police Events Around New York

**H**appy summer to all! As Police Memorial Week events occurred throughout New York and across the country last month, let me start by recognizing the bravery of those who gave the ultimate sacrifice in the performance of their duties...we will never forget!

The NYSACOP Traffic Safety Team and Traffic Safety Committee (TSC) continue to serve our members and promote traffic safety engagement throughout the State. The team, working in concert with the TSC and the Governors Traffic Safety Committee (GTSC), works to provide information, resources and assistance to all our members, their agencies and allied organizations. If you would like assistance re: your agency's traffic safety matters please don't hesitate to contact NYSACOP Traffic Safety Services Coordinator Dan Denz at [ddenz@nychiefs.org](mailto:ddenz@nychiefs.org).

I am pleased to announce that we recently added a new member to our team. Frank Galerie is our new NYSACOP Law Enforcement Liaison (LEL) assigned to GTSC. Frank is a great addition to our team and has extensive law enforcement experience including Mechanicville PD, the Saratoga Co. Sher-

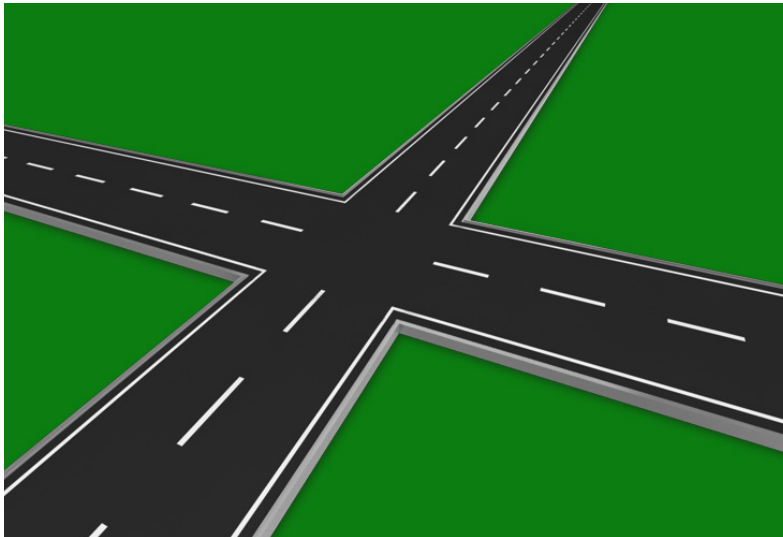
iff's Department, DCJS and the Attorney General's Office. Welcome Frank!

The team is continuously involved in training efforts. Our Traffic Safety Executive Leadership seminars are ongoing and we recently conducted sessions

at Lake Placid PD and the New York State Association of Chiefs of Police, Police Executive Training Seminar at the Niagara Falls Air Force Base. If your region is interested in this training, please contact us. In March we attended the MADD – NHTSA Region 2 Impaired Driving Summit at Middlesex College,

Edison, New Jersey and also the Empire State Law Enforcement Traffic Safety Conference (ESLETS) which was held in April at the Sagamore Resort on Lake George, Bolton Landing, N.Y. Both were interesting and informative and hopefully many of you were able to attend one or both.

We continue to work with both GTSC and DCJS to provide ongoing training in traffic safety related areas including, but not limited to, impaired driving, crash investigation, commercial vehicle enforcement, motorcycle safety and enforcement initiatives. We also sponsor Below 100 training courses



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so please contact us if you're interested in hosting one. Training courses are routinely announced in NYSACOP bulletins, to our Traffic Safety Points of Contact and also on the website so please be on the lookout for them. Drug Recognition Expert (DRE) training is being offered continuously as impaired driving, especially drug impaired driving, is on the rise and thus more DREs are needed. One important point regarding DRE training is that proficiency in Standardized Field Sobriety Testing (SFST) is mandatory so both ARIDE and SFST training are important. FYI, several ARIDE training courses are currently being announced. Additional-



ly be on the lookout for a new training program, Recognizing the Cannabis Impaired Motorist. Sessions are currently being scheduled for June through August.

In addition to training, we constantly monitor traffic safety issues and are currently working on several issues including the issue of oral fluids testing. If your agency is currently using this technology, or has in the past, please let us know as we are interested in your experiences. Additionally we have been working with our partners to urge the Legislature to pass the Deadly Driving Bill (S.3135/A.174) and hope that the coalition's efforts

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will result in passage of the bill.

Two conferences that are coming up to let you know about. First the NYSACOP Annual Conference will be held on July 14-17 at the Buffalo Hyatt Regency Hotel. Registration is open and can be found on the NYSACOP website. We hope you will join us at what promises to be a great conference! Also the IACP Impaired Driving & Traffic Safety Conference will be held on August 16-18 in Washington, D.C.

As summer is upon us, traffic gets heavier and hazardous driving increases. Thank you for all you do to make traffic safety a priority. We all know that an important component of traffic safety is enforce-

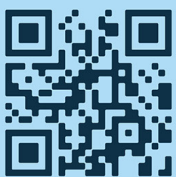
ment so please keep up the good work to ensure our roadways are safe. Traffic safety is public safety!

As always, we welcome your comments, suggestions and involvement and also would very much like to hear about what your agency is doing to promote traffic safety so please let us know so we can showcase your traffic safety initiatives. For further information, or if you would like our assistance, please contact NYSACOP Traffic Safety Services Coordinator Dan Denz at [ddenz@nychiefs.org](mailto:ddenz@nychiefs.org). Stay safe!

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*Bill Georges, A/Chief (ret.) Albany PD  
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# Factors in Leader Development: *Leadership Traits*

By Greg Veitch, Retired Chief of Police from Saratoga Springs, NY



Creating a list of leadership traits might seem a nearly impossible task. Such a list might start by including traits such as adaptable, accepting, accountable, ambitious, appreciative, approachable, assertive, attentive, and authentic. These are just some of the leadership traits that start with the letter “A,” you can probably add some more.

In his book, *Introduction to Leadership: Concepts and Practice*, Peter G. Northouse identifies six key traits, based on the research, that effective leaders exhibit. The six key traits are; intelligence, confidence, charisma, determination, sociability, and integrity.

As we examine each of these six traits it may be beneficial to consider how we might better display each of these traits in our individual leadership as well as keeping them in mind when considering who we may want to promote into future leadership positions.

Intelligence is the first trait effective leaders exhibit that we will look at. Fortunately, the trait of intelligence does not mean that effective leaders need to have IQ scores approaching 400 and the ability to speak half a dozen languages. But leaders do behave in certain ways that can improve intelligence.

Intelligent people stay informed. Leaders stay aware of what is going on around them. They know what their job requires, and they remain alert to conditions that will affect their leadership role and their team’s performance. Good leaders keep up to date on policies, procedures, and their job descriptions, as well as what is going on in the workspace. In other words, they gather information upon which to base their decisions.

A mentor of mine once said to me, “just be smart

about stuff and you’ll do just fine as a boss.” I took that to mean, know what is going on around you, base your decisions on facts and reason through the challenges you will inevitably face as a leader. Intelligent, effective leaders do just that, even if they never do appear on any lists of the smartest people on earth.

Confidence is another key leadership trait. People like to follow leaders who are confident that goals will be accomplished. People want to follow leaders who are certain of who they are and are comfortable in their role. Confident leaders are sure that they are doing the right things. Their vision is clear. They do not spend much time or effort second-guessing themselves and doubting their abilities.

If you have been in a leadership role for a long time you might recognize that you are much more self-confident today than when you were first starting out on your leadership journey. That is simply because confidence comes from practice. Like almost everything else we do in life, leadership improves with practice.

Individually, leaders can continue to build their confidence by taking on ever more challenging and diverse challenges. Senior leaders can pass on this leadership trait to others by mentoring younger leaders. Providing opportunities, along with giving feedback and advice will help junior leaders develop the critical leadership trait of confidence.

Northouse suggests that charisma is another key trait of effective leaders. Many of us immediately think of great leaders of the past when we think of charismatic leaders. Persuasive and passionate leaders who inspired millions and changed the world. Leaders like





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# One Person Can Make a Difference

By Gordan Graham



**G**ordan Graham here and thanks for taking the time out of your busy schedule to read my ramblings. I know your time is precious. And so is mine, so I have some basic boundaries on how I spend my time. Daily I get a barrage of emails and here is my rule: If it is a field of knowledge I am interested in and is less than a six-minute read or viewing (that is one-tenth of a billable hour), I will take a look at it. Regularly I get videos from people I know with the attached note, “Gordon, you need to watch this” and I look at the length of the video and it is 55 minutes or longer. I have to wonder, where do people get all this free time to spend a billable hour viewing this? I really appreciate when people add, “Start watching at the 23-minute mark – the stuff before that is all fodder.” For those of you who do that, thank you!

Similarly, I have rules about driving vs. flying: 300 miles is the tipping point. If the distance is less than that I will drive it; if it is more than that I will fly it. I also put time limits on other activities like watching TV or walking (although I can multitask there and listen to “old time radio” on Sirius 148 – if you have not visited that channel, you are missing some great stuff). There is no limit on the time I will spend with Mrs. G – she has been a saint for 40 years putting up with my schedule – and of course time with the children and future grandchildren will have no limits.

But I recognize that your time is valuable also. And that is why the Today’s Tips I prepare for Lexipol are always around two minutes in length, with a rule that they do not exceed three minutes. And similarly, I try to structure these “ramblings” to a thousand words (plus or minus), which requires about four to five minutes of your time to read.

In my last article I closed with asking you to take a look at the articles I provided regarding Sid Heal and Richard Rescorla. I hope you spent the time to learn about these two men who proved to me that “one person can make one heck of a difference” in the lives of others.

I never met Mr. Rescorla, although I know people who knew him. What a difference the “lad from Cornwall” made with his early work in the British military, then the U.S. Army and then in private sector with Morgan Stanley. For those of you who did not read the article, here are some highlights: He warned the owners of the World Trade Center well prior to 1993 that

the underground parking at WTC was a problem lying in wait. It was an easy target for terrorists to plant a truck bomb in the basement and try to blow up the building. Of course, he was dismissed by “smart people” who worried about the cost and the disruption to the ingress and egress of vehicles. But his prediction

was right – although he was off by 30 feet regarding the location of the attack. More on this in the next article, when I will further explore the importance of “spending time and money up front to address an uncertainty in the future.”

After that failed attempt, Mr. Rescorla predicted the terrorists would be back. Specifically, he warned about the possibility of using massive airplanes to “take down the WTC” – and again he was dismissed. I can only imagine the private conversations of “the smart people”: There he goes again – the sky is falling, the sky is falling, the sky is falling! But this time he decided to train all Morgan Stanley employees on building evacuation scenarios, recognizing that most people who work in a high-rise building have never been in the stairwells



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(except to smoke dope during their lunch hour). This caused a lot of angst among the bosses about how much time was being wasted – billable hours being lost because of the “fearful” thinking of Mr. Rescorla. But if you read the article, you know how valuable that use of time ultimately was. I wish I had met him; I love the stories from people who knew him well.

But I did know Sid Heal. I first met him in the early '80s when we were both sergeants – him with LASO and me with the CHP – and I quickly learned what a genius he was. Our first work together was on cross-training SWAT cops to be proficient in EMS. We regularly collaborated on tactical operations. Sid was very involved with the LASO Special Enforcement Bureau and the California Tactical Officers Association and he would often invite me to meetings to discuss my thoughts on managing risk in their world. He was highly educated with formal schooling but even more educated from the “college of hard knocks” with his work in the Marine Corps (he fought in four different wars for our nation) and the street smarts he picked up the hard way in South Los Angeles as well as learning from other cops during his lectures.

But what I found most impressive about him is that he shared his time with me. There was never a time he did not return my call and talk to me about the various goings on in the world of law enforcement. To me that was the ultimate sign of respect. He took the time to talk to me and so many others. On the day prior to his untimely death in his sleep at the age of 72, I left him a message about hearing aids and which ones he would recommend and if they would help with my tinnitus. Sadly I did not get a call back from him.

If I am boring you with this, here is my point. The fact that you are reading this tells me you are a “Level Three” professional. This concept comes from Dr. Tony Kern in his great book *Going Pro*. Level One is membership in your department, Level Two is compliance with the rules, Level Three is you are constantly trying to improve the quality of your work. And as a Level Three professional, you probably often hear from co-workers and others seeking your advice. Please recognize the importance of sharing your knowledge with others. Follow up with them after your initial chat. Make sure they are headed in the right direction. Recommend a book to them that may be of benefit. And be grateful that working together you are improving the

overall quality of the work of your department.

Having just checked the word count I recognize that I am about 16% over my allotment of 1,000 words, so I will sign off. Hopefully the five minutes you spent on this reading will be of value to you.

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*Gordon Graham is a 33-year veteran of law enforcement and is the co-founder of Lexipol, where he serves on the current board of directors. A practicing attorney, Graham focuses on managing risk in public safety operations and has presented a commonsense approach to risk management to hundreds of thousands of public safety professionals around the world. He holds a master's degree in Safety and Systems Management from University of Southern California and a Juris Doctorate from Western State University.*



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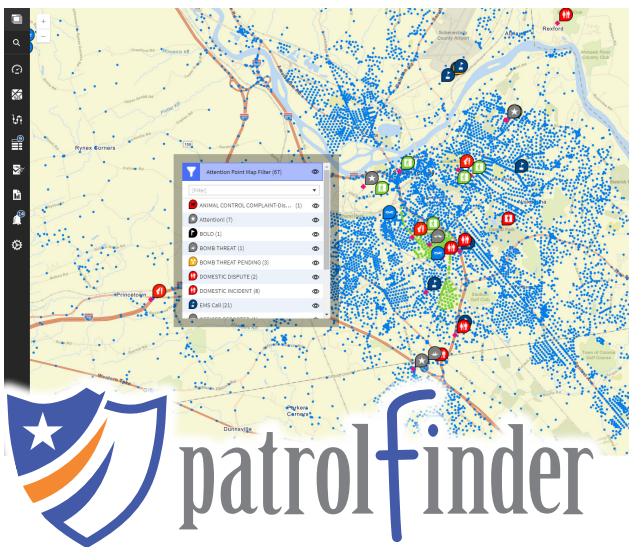







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# NYSACOP Event Review

By Lawrence Eggert, Director of the Niagara County Crime Analysis Center,  
Retired Chief Lockport NY

**O**n March 18th thru 22nd, 2024 the New York State Association of Chiefs of Police hosted their 4th annual Executive Training Seminar at the Niagara Falls Airforce Base in Niagara County, New York. The Seminar is a unique collaboration between NYSACOP, the New York State Department of Criminal Justice Services (DCJS) and Hilbert College.

Five years ago, the training staff at NYSACOP, in cooperation with DCJS and Hilbert College began discussions on the need for advanced training for police chiefs in New York State. What emerged from these many discussions was a curriculum specifically designed to enhance the abilities of current and future police leaders. The recommended curriculum consisted of various administrative disciplines that the group determined was important. Specifically, the initial curriculum included courses on leadership, human resources, budgeting, and other valuable administrative topics.



Our first Seminar was held at Hilbert College, and was attended by about 15 people. Each year our attendance has grown, with the March 2024 training being attended by almost 60 police leaders from across the state. These Seminars are generously funded and supported by the good offices of the NYS Department of Criminal Justice Services.

The 2024 Seminar agenda included presentations from Chief (Ret.) Mike Ranalli and Chief (Ret.) Greg Veitch on Leadership/Risk Management, FBI Special Agent (Ret.) Dave Budz on Building an Officer Wellness program, Buffalo PD Detective Brian Ross on Internal Investigations/Building a Critical Incident Policy, an overview of the DCJS Knowledge Bank by DCJS Program Research Specialist Amanda McGlinchy-Tudor, Evidence Based Policing presented by DCJS representatives Ryan Perlongo (DCJS Chief of Evidence-Based Training and Innovation) and Chuck Tyree (DCJS Supervisor for Office of Public Safety), Buffalo PD Captain (Ret.) Jeff Rinaldo on Media



Relations/Freedom of Information Requests/Doxing, an Overview of 207c by Mr. Lance Klein (managing member of Keane & Beane Attorneys at Law), Monroe Crime Analysis Center Director Dave Phelps and ATF



tured several evening social events including a private trip to Niagara Falls to visit the Cave of the Winds at the base of the Falls.

ASAC Mike Curran on the DCJS Crime Analysis Center network/Crime Gun Investigations, and many other outstanding presenters and valuable topics.

The 2024 Seminar was kicked off Monday morning by a thought-provoking presentation titled “What you do Matters” by Jason Kalish (Deputy County Prose-

We will soon begin to plan for the 2025 Seminar. If you have any ideas for presentation or questions about the Seminar, please contact NYSACOP Director Pat Phelan. We are looking forward to seeing you at the 2025 Executive Seminar to participate in this valuable training!

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curator for Maricopa County Arizona) and Todd Larson (Scottsdale Arizona PD). This nationally acclaimed presentation uses historical references to examine the role of the police to ensure that the core values of our democracy are upheld. The March Seminar also fea-

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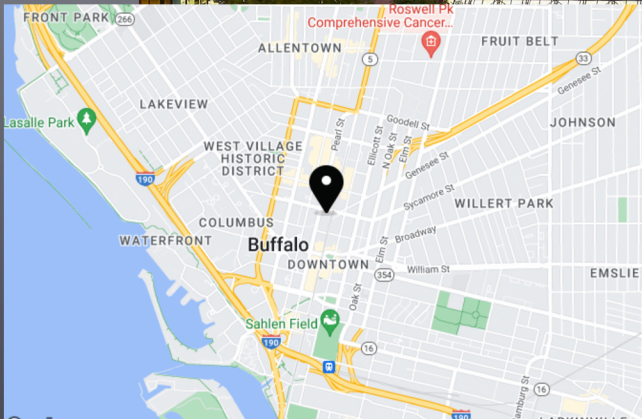
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