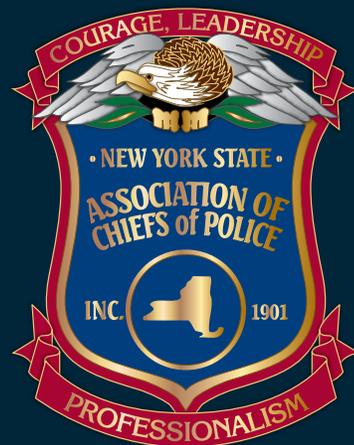


The New York State Chief's Chronicle



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September 2017



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Contact the editor: Dennis R. Naylor at dnaylor@nychiefs.org

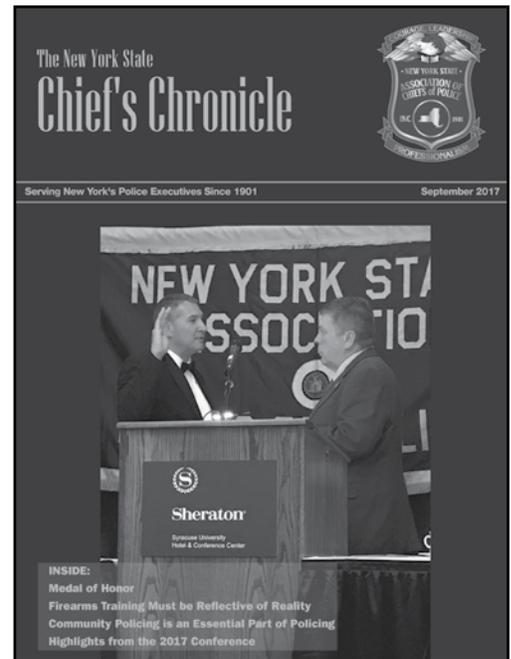
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On the Cover:

Pictured on the cover is the new president of the New York State Association of Chiefs of Police, Chief Michael Lefancheck of the Village of Baldwinsville Police Department. Chief Lefancheck is seen taking the oath of the presidency, as it is administered by the Mayor of the Village of Baldwinsville, Richard Clarke. Chief Lefancheck's swearing in ceremony took place at the installation banquet on Wednesday, July 26th which concluded another excellent annual training conference. We all wish Chief Lefancheck much success in his new role and know that he'll do an outstanding job!



Medal of Honor Recipient

The following was read at this year's annual training conference to recognize the medal of honor recipient. As it so happens, this year's recipient was from our host city, the City of Syracuse PD. The actions of the award recipient, Officer Kelsey Francemone, were highly heroic and completely deserving of such an esteemed award as you will see when you read what follows:

"On June 19 2016 at approximately 11:09 PM, you were dispatched to the 300 block of Otisco Street on a report of a man down. Within a few minutes after arriving at the scene, you determined the report was unfounded but also determined that a disorderly crowd numbering in the hundreds was gathered at a nearby housing project. Realizing the potential for a large disturbance, you notified dispatch of your observations and requested additional units to help disperse the crowd. Within a brief time, you heard several gunshots emanating from the large crowd. Once again, you notified dispatch of your observations, and putting concern for the public's safety above your own, you swiftly ran to the location of the gunshots, while scores of frantic and frightened individuals streamed past you, running away from gunfire.

As you arrived at the exact location of the shots fired, you quickly conducted a visual assessment of the location and observed a chaotic scene with numerous unruly individuals engaged in violent behavior. Simultaneously, you observed a male intentionally discharging a handgun, with total disregard for human life, at another individual in the crowd. Recognizing the perilous threat, you promptly ordered the individual several times to drop his weapon. After all attempts to convince the suspect to discard the weapon failed, you took necessary action to defend lives of numerous individuals and stopped the threat.

Though the threat you had engaged had ceased, several other individuals were still actively engaged in discharging weapons into the unruly crowd. Because of the continuing danger, you proceeded to reload your weapon and prepared to engage the ongoing threats. Unfortunately, as you prepared to engage the other threats, you were violently attacked by several hostile individuals who knocked you to the ground, and proceeded to strike and kick you about the

body. Utilizing proper self-defense skills, you were able to defend yourself until other officers arrived, at which time, they, too, were also viciously attacked. In fact, the scene was so chaotic and violent, that officers from almost every law-enforcement agency across the county responded to help quell the disorder. An after-action investigation into the incident revealed that six or seven different individuals had actively discharged weapons into the crowd, with total disregard for human life, and that approximately 40 shots were fired.

As a direct result of your police knowledge, training, and self-defense skills, you immediately reacted to a threat, preventing imminent injury or death to numerous individuals.

Your actions demonstrated outstanding bravery, heroism, and personal courage as well as devotion to duty and the members of the New York State Association of Chiefs of Police are proud to present you with the Medal of Honor. Congratulations!



In the corresponding photo standing left to right is: **Syracuse Police Chief Frank Fowler, Award Recipient and Syracuse Police Officer, Kelsey Francemone, NYSACOP Immediate Past President Dave Zack, NYSACOP Executive Director, Margaret Ryan, and NYSACOP Director of Research, Development, and Training, Dennis Naylor.**

President's Report

Community Policing is an Essential Part of Policing



BY CHIEF MICHAEL LEFANCHECK, PRESIDENT

What an honor it is to write this article as the current President of our great association. As I mentioned during my remarks at the conference, New York State has the most diverse type of policing anywhere in the country. From the metropolis of New York City and the 38,000 members of the NYPD, to rural upstate police departments in the Adirondacks who sometimes need to utilize boats and snowmobiles to respond to calls for service; our state provides a level of variety not seen

“Service with Understanding” should be the backbone of the agency.

anywhere else. Many departments have a unique history because of the nature of their surroundings and the one I’ve had the privilege of working in for the past thirty years is no different.

For those of you not familiar, the Village of Baldwinsville is located in the northwest portion of Onondaga County, about thirteen miles from the City of Syracuse and has a population of about 8,000 residents, making it the largest village in both size and population in the county. Our village was originally a settlement along the Seneca River, which runs directly through our community and the NYS Barge Canal was adjacent to the river, which provided much of the economy during the 1800’s. The first law enforcement presence in Baldwinsville was a police constable, who was elected in 1851, with the first Chief of Police being appointed in 1908.

Like many small locales, the department was a strong presence within the community throughout much of the 1900’s, however, in late 1971 and early 1972, many of the police officers had a dispute with the Mayor and the members of the Village Board. This resulted in all of the police officers, with the exception of two, resigning from the force. After several months of research, the Village Board decided to reorganize the department under the 1967 President’s Commission on Law Enforcement Report.

This called for a “Community Service” approach to policing and also required that all officers hired be required to have a college degree, which was quite unique for the time period. Other differences would be that the Police Officers would be called “Community Service Officers” the Sergeants would be called “Police Agents” and the Chief of Police would be referred to as the “Police Administrator”. Officers would not wear a badge on their uniform, rather they would wear a patch. Officers would also wear a cranberry colored blazer as part of their uniform. The

New York State has the most diverse type of policing anywhere in the country.

concept was that the new uniform would present a somewhat “softer” and more “business like” appearance, thus resulting in better community and police relations. The village also offered



the highest salary in the county for these new, college educated officers of \$9000 per year!

A close working relationship with the local school district was actively sought out and the students at the high school were asked to provide a motto for this “new” department. Many suggestions were provided but the students felt that “Service with Understanding” should be the backbone of the agency.

While our uniform has changed considerably since that time (we now wear a traditional uniform and haven’t worn the blazer since the late 1970’s), we still wear a patch in place of a badge and the motto for the department remains the same one those high school

During my term as your President, I plan to spotlight many of the other agencies from around the state, who are engaged in activities that enhance the quality of life for their residents.

students selected many years ago. We are committed to the concept of providing the residents of Baldwinsville a level of service that

they are unable to obtain from any other law enforcement entity.

Over the past two decades, the phrase “community policing” has been regularly used by citizens, elected officials, members of the media and even police administrators, as something for departments to strive for. I am proud that for the past 45 years, the Baldwinsville Police Department has been at the front of that effort and has continually sought out ways to increase our involvement with the community we serve.

During my term as your President, I plan to spotlight many of the

other agencies from around the state, who are engaged in activities that enhance the quality of life for their residents. So many of us share our policies and procedures but sometimes we aren't always aware of the different programs in which others in law enforcement are involved. I'm hoping that over the next year we can change that and exchange our great community policing ideas more freely.

I am proud to be associated with the professional law enforcement leaders we have here in New York and look forward to meeting many more of you during my term as your President.

City of Middletown Police Chief Bethencourt Retires

The City of Middletown Police Department is proud to announce the retirement of Chief Ramon Bethencourt, a 25 year veteran of the agency, effective July 31, 2017. Chief Bethencourt began his career with the Middletown Police Department in December of 1992, rising through the ranks to become Orange County's first African American Chief of Police in February of 2010. Bethencourt previously served as a patrolman for the Village of Ellenville Police, from 1989 until his appointment to the Middletown Police Department. Chief Bethencourt will be most remembered for his Community-Centered approach to policing, and his focus on the deployment of police officers and other department resources into the neighborhoods throughout the City. He is a graduate of the 233rd Session of the prestigious FBI National Academy, and has utilized the knowledge and experience he gained throughout his career to increase the level of professionalism and discipline within the organization.

The Middletown Police Department thanks Chief Bethencourt for his many years of dedicated service and commitment to the City of Middletown, and we wish him good health and prosperity in his retirement.



CHIEF RAMON BETHENCOURT

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2018 Annual Training Conference.

Executive Director's Report

117th Annual Training Conference Highlights



BY CHIEF (RET.) MARGARET E. RYAN

It was recently that time of year for the Annual Training Conference of the New York State Association of Chiefs of Police. Merriam-Webster defines train as a verb “to teach so as to make fit, qualified or proficient.” The issue of police training and professionalization represents the core of our Association. Organized in 1901 and incorporated in 1957, the primary objective of the Association is to achieve professional recognition, uniformity of operation and the advancement of the general welfare of the police profession through the education of members. Even our Constitution and By-Laws state the primary purpose of the Association is an educational one; to gather, disseminate, and promote useful and necessary information to the law enforcement agencies of the State of New York. July 2017 marked the Association’s 117th Annual Training Conference, providing the latest training, innovation and procedure. The ambitious agenda featured today’s most prevalent police issues presented by an impressive lineup of presenters.

Opening Ceremonies provided attendees a chance to hear from several speakers. The diversity of officers and departments was representative of the members of the Honor Guard and rendition of the National Anthem. Recently appointed New York State Department of Homeland Security and Emergency Services Commissioner, Roger Parrino, attended and reminded attendees of the capabilities we have when working collectively. Mike Green, New York State Division of Criminal Justice Services Executive Deputy Commissioner, provided an overview of crime trends both currently and historically. After a busy legislative session, Commissioner Green provided legal updates on identification procedures, criminal history sealing, video recording of custodial interrogations, bail and speedy trial reforms on the horizon and touched on the new Raise the Age legislation. Training and technology initiatives are on the horizon including the Leadership Training Institute that begins in September. A warm welcome from Syracuse Mayor Stephanie Miner followed Syracuse Police Chief Frank Fowler’s comments on “Human Equity.” Chief Fowler stressed the importance of building community relationships prior to critical incidents, such as you’ll see in this year’s NYSACOP Medal of Honor recipient.

Dic Donohue is a retired Massachusetts Bay Transit Authority police sergeant who was seriously wounded in the line of duty during the Watertown, Massachusetts shooting following the Boston bombings. Massachusetts State Police Trooper Chris Dumont recounted his arrival at the scene and his actions and contributions as a paramedic during the rescue of Sergeant Donohue. With

July 2017 marked the Association’s 117th Annual Training Conference, providing the latest training, innovation and procedure. The ambitious agenda featured today’s most prevalent police issues presented by an impressive lineup of presenters.

significant blood loss and given a 2% chance of survival, Sergeant Donohue reminded us of resilience through recovery. “It doesn’t matter what department we are from or what color the uniform we wear, we all face the same danger.” Community support, whether it’s the community you serve or the community of the thin-blue-line, there must be consistent communication over the course of time.

A panel of subject matter experts from the local, state, and national level discussed the importance of traffic enforcement. Traffic crashes are on the rise not only in New York State but across the country. This dangerous trend endangers everyone from law enforcement to those who drive, ride, bike, or walk. Law enforcement has the critical task of enforcement and education as an effort to reduce crashes and fatalities.

Threat levels have changed and the increased levels of sophistication, and the adopted terrorism philosophy along with rhetoric and support for terrorism, outline the importance and necessity of local, state, and federal law enforcement working together to keep our communities safe. New York City Assistant Commissioner of Intelligence Analysis, Rebecca Ulam Weiner, provided insight into terrorist activities, thwarted plots, and NYPD’s efforts in coordination of operating and integrating intelligence analysis for the world’s largest police department. Central New York counter-terrorism measures were reviewed by Syracuse Police Captain David Mirizio and Camillus Police Captain Steve Rotunno. Public safety is everyone’s priority. Terrorism recruitment, terrorism threats and counter terrorism efforts can occur anywhere at any time. As mentioned by NYSACOP President Lefancheck, the need for the public’s involvement in “See Something, Say Something” is paramount for the effectiveness and safety of everyone.

As a nationally recognized authority on leadership and employee performance issues, Chief (retired) Ron Glidden provided valuable information to improve employee morale and performance

while removing the “morale killing behaviors.” “You deserve a leadership team that understands how to build employee trust and commitment. Your organization deserves supervisors who create a workplace where motivation can thrive. The public deserves quality service that comes from your committed employees.”

Given the changing complexities and dynamics confronting law enforcement, and to ably represent law enforcement on those pressing issues, International Association of Chiefs of Police (IACP) Deputy Executive Director Chief (retired) Terry Cunningham and IACP Executive Board Member Chief Dave Zack, our NYSACOP Immediate Past President, lead a forum to visit with police leaders. The resounding issue both in New York State and nationally is mental health issues. Chief Zack discussed Crisis Intervention Training and Crisis Intervention Teams while Cunningham provided an overview of the “One Mind Campaign,” a police response to those who deal with mental illness. Recruitment and retention issues, marijuana as a gateway drug, use of force and the media’s depiction of law enforcement were also topics which were touched on.

Tactical decisions, use of force, understanding the impact of human dynamics under stress, how the human mind responds to high stress situations, and how all of this relates to tactical decisions made by officers was covered by NYSACOP Past President, Chief (retired) Mike Ranalli. Chief Ranalli tied the realities of how courts interpret, and possibly misunderstand, officer’s actions in use of force cases. What is the appropriate response by an officer? Chief Ranalli provided insight on Graham vs. Connor and special duty relationships.

As mentioned previously, Commissioner Green briefly discussed new legislation passed regarding raising the age of criminal responsibility. Commissioner Green and New York State Office of Children and Family Services Associate Attorney for Legislation and Special Projects, Cassandra Kelleher-Donnaruma, provided conference attendees with key points of the new legislation. Attorney Cassandra-Kelleher Donnaruma, provided a background on the bill drafting and several implementation dates. The offender’s age at the time of the crime and the crime itself will determine if they will fall into one of three classes; juvenile offender; juvenile delinquent; and the new class entitled adolescent offender.

Since June 2016, New York State has been a Blue Immersion State and integration of the Blue Courage curriculum has occurred in different parts of the state. Merriam-Webster also defines courage as mental or moral strength to venture, persevere and

withstand danger, fear or difficulty. Courage comes from the Latin word *cor* meaning heart. Retired police commander and Blue Courage founder and managing partner, Michael Nila, spoke

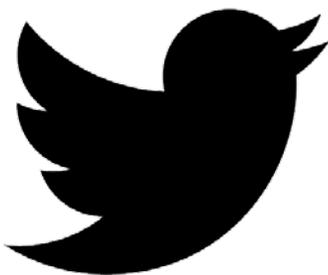
“Law enforcement leaders from across the state and the nation came together in Syracuse to fulfill the NYSACOP primary objective “the advancement of the general welfare of the police profession through the education of its members.”

directly from his heart. The Executive Overview was designed to touch hearts, awaken minds, and ignite the spirits of our law enforcement officers.

Training sessions concluded with our final presenter, Attorney Eric Daigle of the Daigle Law Group. His expertise on crowd management and control as well as technology pitfalls in law enforcement operations assisted agency leaders with focusing on three areas; policy; training; and supervision. The key takeaway from the presentation, “Do you have a policy on that?”

The conference concluded with our formal installation banquet. New York State Senator Fred Akshar was our keynote speaker and his 15 years of service to the Broome County Sheriff’s Department was evident when he said that he “still bleeds blue.” Chief Zack recalled his administrative goals, legislative agenda, and fostered relationships followed by a standing ovation for all he has done during his presidency over the last year. Congratulations to our new president, Village of Baldwinsville Police Chief, Michael Lefancheck, who was sworn in by Baldwinsville Mayor, Richard Clarke.

While it is often tempting to find other issues at the top of the to-do pile, and the old adage of “do more with less,” law enforcement training makes us “fit, qualified, (and).. proficient.” “Law enforcement leaders from across the state and the nation came together in Syracuse to fulfill the NYSACOP primary objective “the advancement of the general welfare of the police profession through the education of its members.” Contemporary and challenging issues face law enforcement today, and as Chief Zack stated, “gain some knowledge, connect with colleagues, make some new friends, and don’t be afraid to relax a bit.” Looking forward to all of that next year too in Long Island for the 118th conference!



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Counsel's Corner



Police Use of Force: Reality Versus Law



BY CHIEF (RET.) MICHAEL RANALLI, ESQ.

In my two prior editions of the Chief's Chronicle, I have explored the implications of policy modifications to the Fourth Amendment objective reasonableness standard (March 2017), and the possible impact of policy language and state tort law (June 2017). In this edition, I will use two recent court cases to highlight

Officers usually are reacting to the decisions of others. Studies have shown that a person can act faster than an officer can react in a use of force scenario. Specifically, a suspect with his gun pointed down at his side can typically raise and shoot at a police officer before the officer, who has his or her gun at the high ready, can shoot at the suspect.

the potential disconnect that can exist between the reality of human response versus application of the law.

First, a few ground rules:

- Humans are susceptible to mistakes and errors under normal circumstances, and are even more susceptible during high-stress, rapidly evolving situations.
- We are susceptible to selective attention, otherwise known as tunnel vision. We sometimes only see what we are paying attention to and focused on – typically the perceived threat – and miss things in the periphery, such as the presence of pedestrians and/or police officers.
- Auditory exclusion and compromised motor skills can also impede officers during high-stress situations.
- The limited training most police officers receive provides modest assistance, at best, in overcoming these effects and making decisions during high-stress situations.

Another critical concept to introduce here is that of action version reaction. Officers usually are reacting to the decisions of others. Studies have shown that a person can act faster than an officer can react in a use of force scenario. Specifically, a suspect with his gun pointed down at his side can typically raise and shoot at a police officer before the officer, who has his or her gun at the high

Since officers may already be at a disadvantage, the last thing agencies should do is to create overly restrictive use of force policies that may not be possible for officers to adhere to.

ready, can shoot at the suspect.

While that may seem counter-intuitive, it happens because decision-making takes time. The officer in such a scenario must perceive and absorb the stimuli, process it within context, decide on a response and then execute the motor program to physically initiate and perform the response. The suspect, however, has already completed the first three of these four steps without the officer's knowledge, requiring the officer to try to complete all four in the time it takes the suspect to raise and fire the gun.

The decision-making process necessary for an officer to start shooting will also apply to the decision to stop shooting. In other words, it can take time for an officer to realize the threat a suspect has presented is now over – resulting in additional trigger pulls after the suspect is neutralized.

How does this impact policy? Since officers may already be at a disadvantage, the last thing agencies should do is to create overly restrictive use of force policies that may not be possible for officers to adhere to.

To further complicate the realities of use of force situations, what if the courts do not properly apply the law? Or what if the judge or the litigants in the case do not understand the limitations of human physiology under stress?

White v. Pauly, 137 S.Ct. 548 (2017)

Daniel Pauly was allegedly driving recklessly, which led to a road rage incident with two women. After a brief roadside confrontation with them, he left the scene and drove to his house nearby where he lived with his brother, Samuel. The police were called by the women and the officers decided to respond to the Pauly home to speak with Daniel about the incident, although no charges were to be filed. Two officers approached the house in a covert manner, using their flashlights only intermittently.

The brothers eventually became aware of the officers and yelled

—COUNSEL'S CORNER, continued on page 10

Police Defense Tactics Curriculum Updated:

Dennis Naylor, the Director of Research, Development, and Training for the New York State Association of Chiefs of Police (seen in TSAC shirt in top left photo), is shown taking part in the DCJS two-day Defensive Tactics refresher course with other defensive tactics instructors from New York State. The Defensive Tactics Curriculum is being revamped in a very positive manner and all certified defensive tactics instructors will have to receive the updated training by January 1, 2018. Please look for a detailed

article on the new foundational principles of the updated defensive tactics curriculum in the September issue of the Chiefly Speaking newsletter. Also, please look for an upcoming audio podcast to be released this month in which the lead defensive tactics instructor who has been charged with disseminating this new curriculum, Officer Jay Wadsworth of the Jamestown PD (seen pointing in the top center photo), explains the changes and the reasons for the updates.



Firearms Training Must be Reflective of Reality



BY: CHIEF (RET.) DENNIS R. NAYOR, DIRECTOR OF RESEARCH, DEVELOPMENT, AND TRAINING; NYSACOP

I hope that everyone could glean some valuable information from the article that I wrote for the August NYSACOP newsletter regarding ambush-style attacks against law enforcement officers. As a follow-up to that topic, I would like to take this opportunity to discuss firearms training as it correlates with survivability in a deadly physical force encounter. As a veteran firearms instructor,

As explained in the police ambush article, the most beneficial training which officers can partake in is that which is designed with a reality-basis in mind, limited only by one's imagination.

I firmly believe that the way in which we train in firearms is the way in which we will respond in a real gun fight. For this reason, we must make certain that we are training with the concept of real-world dynamics in mind and that the time spent on the range is specifically designed to meet that goal.

I remember when I was a new officer, the range time was always highly predictable. We would qualify on a static course of fire, we would reload only when told to do so, the range instructor would assist all shooters in the clearing of any malfunctions, and timed courses were relaxed since those with an "alibi" for not getting off all required rounds could do so prior to the scoring of the targets. Similarly, there were no shoot/don't shoot (challenge) drills, no movement and facing drills, no shooting from behind cover, no weapon transition drills, and no malfunction-clearing

Additionally, since no officer can determine when he or she may be required to use their firearm, training should occur in different lighting conditions, during different seasons, and during various weather conditions.

drills. Proudly by the time I had retired six months ago, we were doing all of this and more during our qualifications, which was a tremendous evolution and improvement.

As explained in the police ambush article, the most beneficial training which officers can partake in is that which is designed with a reality-basis in mind, limited only by one's imagination. Reality

Philosophically, I believe that on the range, rank holds no meaning because in a gun fight, a person's rank is rendered completely meaningless, leaving one's proficiency and tactical ability as the only matters of importance.

based training (RBT) gears the training and the training environment to mimic that of the real world as much as possible. This allows for rapid decision-making and action under stress, confusion, and unknown or rapidly changing variables. In firearms training, this means creating qualifying courses which not only focus on the fundamentals of marksmanship and proper weapons handling, but which incorporate the nuances of real life. At a minimum, this means that all shooters will work through malfunctions on their own; it means that time limits (which are added as stressors) are adhered to with no "alibis" permitted; it means shooting while moving to cover and shooting from behind positions of cover; it means drawing the weapon from a fully engaged retention holster as it would normally be carried; it means lowering the weapon to scan the area for additional threats after shooting and before reholstering; it means engaging in tactical reloads and manipulating your own ammunition during breaks in courses of fire so that you are always performing tactically; it means transitioning from one weapon system to another when malfunctions can't be cleared; and it means responding in the way in which you may have to respond in the actual situation.

Additionally, since no officer can determine when he or she may be required to use their firearm, training should occur in different lighting conditions, during different seasons, and during various weather conditions. Obviously, safety must always be a consideration, however the era of qualifying only when the weather is sunny and clear is over. Training at night, in the rain, in the wind, and in the snow, are all potentialities of a real-life situation and therefore relevant firearms training should mimic that. Additionally, qualifications can be designed so that officers must communicate with each other as they would in a real gun fight. In other words, when reloading, officers can verbalize "reloading" and the officer to their right or left can verbalize "covering" so that there is a coordinated effort, much the same as would be needed in a real-life gun battle.

Equally important is the fact that all officers should qualify while wearing their soft body armor for both a safety and a movement

—*FIREARMS TRAINING, continued on page 16*

out at them. The officers' claim they identified themselves; the lawsuit claims they did not. The brothers armed themselves with a handgun and a shotgun and yelled out, "We have guns."

Officer White arrived at this point. He drew his gun and took cover behind a stone wall about 50 feet from the front of the house. Daniel fired two shotgun blasts out the back door and Samuel opened a front window and pointed his gun in Officer White's direction. Another officer fired at Samuel but missed, and then White shot and killed Samuel.

The Court of Appeals for the 10th Circuit denied summary judgement for all three officers at the scene, but analyzed the first two officers on the scene separately from Officer White. The first two officers were denied qualified immunity because the plaintiff raised an issue of fact as to whether they properly identified themselves. This was important—if they did not, then the officers, according to the court, should have realized their conduct would cause the brothers to defend their home.

Officer White, arriving after the verbal exchange, was denied qualified immunity for a separate reason. The court ruled a jury could conclude Officer White's use of deadly force was not reasonable. The Paulys could not have shot Officer White unless he moved from behind the stone wall. Therefore, the court reasoned, a jury could conclude Officer White was required to warn Pauly before using deadly force, as established in *Tennessee v. Garner* (471 U.S. 1 (1985)) and *Graham v. Connor* (490 U.S. 386 (1989)).

The U.S. Supreme Court reversed as to Officer White, ruling that the requirement of "clearly established law" must be particularized to the facts of the case and cannot be used in general terms by just citing *Garner* and *Graham*. Federal law does not prohibit a reasonable officer who arrives late at an incident from assuming that proper procedures and identification have been followed by other officers up to this point.

Discussion

The Supreme Court hears a very small number of cases that are appealed to it. In prior cases, the Court has made clear to all the circuit courts of appeals that general "clearly established law" statements are not acceptable to provide the necessary notice to law enforcement. Clearly established law must come from a case that could easily fit into a similar fact pattern, and *Graham* and *Garner* do not do that in this case. *Garner* dealt with a situation involving a fleeing felon, which is nowhere near the facts of this case. While the first two officers may have made some tactical mistakes, and may or may not have adequately identified themselves, forcing officers while shots are being fired to have to give away their exact location and possibly expose themselves to gunfire in the process has never been the law.

In such situations officers are already at a disadvantage; to require that they must place themselves at more of a disadvantage is absurd. If the Supreme Court had not heard this case, the "warning issue" would have gone to a jury to decide. Ironically, the 10th Circuit in this case violated "clearly established law" themselves.

BAH V. THE CITY OF NEW YORK, 2017 WL 435823 (S.D.N.Y. 2017)

The facts of this case are complex and detailed, but for purposes of this article I will summarize them succinctly. Mohamed Bah was emotionally disturbed and his mother called 911 to request an ambulance to take him to the hospital. Officers arrived and the mother indicated that Bah was alone in the apartment. When

the officers' initial attempts to communicate with Bah were unsuccessful, the Emergency Services Unit (ESU) was requested and arrived at the apartment.

After a time, the door opened. Whether Bah opened it or whether it was because of something the ESU officers did is a point of disagreement between the parties. The officers allege that Bah attacked them with a knife, but the plaintiff disputed that contention. What is not in dispute is that officers discharged two

We must continue to train our officers about the impact of stressful encounters and through such awareness, hope that they make sound tactical decisions.

TASERs, along with a less-lethal round. These measures were ineffective at subduing Bah, however, and ultimately, officers discharged 10 rounds from their service weapons, killing Bah.

The court addressed multiple legal issues, including the denial of qualified immunity to the officers as to the legality of their entering the apartment under these circumstances, but I will focus on one issue: Specifically, the court stated, "Plaintiff's version of the facts supporting the excessive force claims is that the final shot to the head that killed Bah was fired at close range while Bah was lying wounded on the ground after being previously shot multiple times by the officers. According to plaintiff's version, Bah was no longer attacking the officers with a knife and posed no threat to the officers or anyone else. If proven, this would violate a clearly established right..." (emphasis added).

This ruling will now allow the issue to go to trial for a jury to decide, unless it is settled first.

Discussion

This is clearly a tragic situation and one that has repeated itself in cases across the country. Police are called for a person in crisis and the situation turns deadly. Tragic as it is, it happened and now the officers and the city must defend the claim.

Decision-making takes time. The officers in this case perceived a threat, processed it in context, decided on a course of action, and executed the resulting motor program to fulfill the task – start pulling the trigger. As the officers were firing, they would also be unconsciously tracking Bah as he moved and fell. Depending upon how many officers were firing, 10 rounds could have been fired in 1 to 1.5 seconds or less. It is entirely possible, and likely, that the final, fatal round was fired during this recognition period. The officers may not have had enough time to cognitively process the fact that Bah was down and the threat was over.

This is a reality of human reaction and decision-making. So yes, it is entirely probable that the expert for the plaintiff may be able to prove that the fatal wound was inflicted while Bah was on the ground. But the city may in turn be able to prove that this was an unavoidable result of the human decision-making process.

Conclusion

I hope these articles, taken together, give police executives pause about trying to change human behavior with mere words in a policy. Putting content in policy that may sound good and may appease

—COUNSEL'S CORNER, continued on bottom page 16

Building Relationships in Law Enforcement



BY: CHIEF (RET.) DENNIS R. NAYOR, DIRECTOR OF RESEARCH, DEVELOPMENT, AND TRAINING; NYSACOP

One of the most important endeavors to work towards in modern-day policing is building relationships.

One of the most important endeavors to work towards in modern day policing is building relationships. This philosophy should exist in all aspects of policing and must transcend rank, assignment, and years of service. As agency leaders, it is imperative that this message is understood by all because as Sir Robert Peele, the father of modern policing, stated in 1829, “the ability of the police to perform their duties is dependent upon public approval of police existence, actions, behavior, and the ability of the police to secure and maintain public respect.” When the goal of building relationships within each agency’s respective community is understood by all, positive results will follow.

Building relationships is a team effort and should not be the sole responsibility of the officers assigned to a community affairs unit, the department’s PIO, the school resource officer, and the chief of police.

Building relationships is a team effort and should not be the sole responsibility of the officers assigned to a community affairs unit, the department’s PIO, the school resource officer, and the chief of police. This task can be accomplished by every member through their daily interactions with the public. Courtesy, empathy, and a willingness to do more than the minimum are all great mechanisms to build relationships. Another great means of relationship building is ensuring follow-up for victims and those who require police assistance. As a patrol officer, it can be easy to see every call for service as just another job to get through before the next one is assigned, but to the citizen, that call for service can easily represent a major life experience. Thinking of it in that way can positively influence the efforts put forth, subsequently building relationships along the way.

First-line supervisors are in key positions to make sure that the officers and detectives who most frequently interact with the public are subscribing to this philosophy. It can be as simple as verifying that case follow-ups are completed in a timely manner,

that officers are maintaining a positive attitude, and that any deficiencies in these or related areas are quickly addressed. The first-line supervisors are in the best position to see these things and verify that the department’s mission is being met. Even when it comes to the reality of law enforcement, which is making arrests and issuing tickets, the job can still be done in a way in which respect is always demonstrated. In most cases, even if a positive relationship can’t be established, efforts can be made to prevent a

In policing, the power of the uniform places an even greater value on those simple acts and we are provided so many opportunities each day to do just that.

negative one from forming.

As police administrators, relationship building is a daily activity, but unfortunately opportunities can easily slip by. A notable example of this occurs with emails. As chiefs, it is not uncommon to receive dozens of emails on any given day, ranging from high importance, moderate importance, low importance, to solicitations and spam. With all that occurs for the person in the top position, it is understandable that some of the emails of low importance or even moderate importance may not be immediately answered. However, if the email is from a community member, business owner, citizen making an inquiry, or anyone for that matter, then I can affirm that receiving a response is highly important to them. Failing to reply and essentially ignoring an email sends a message that the writer or inquiry is not important. I know exactly how busy being a chief can be, but I can honestly say that the time spent responding to all emails (except for unsolicited marketing ploys) was always well worth it.

As in any human interaction, the simple gestures of uttering a kind word, saying hello, holding a door, or listening to a person’s problem are ways to build positive relationships. In policing, the power of the uniform places an even greater value on those simple acts and we are provided so many opportunities each day to do just that. It can be easy to think that relationship building is reserved for specific times, people, or events, but it is a process that must continually occur within every department. It is now almost two centuries since Sir Robert Peele spoke of the importance of gaining public approval and respect to effectively police, and that statement is just a true today as it was all of those years ago.

Highlights of the 2017 Annual Training



Mike Lefancheck receives certificate of presidency from Exec Director Margaret Ryan



Dave Zack awarded gavel by Margaret Ryan as presidency concludes



Award to Deputy Superintendent Robert Nuzzo of the NYSP to commemorate the 100th anniversary of the NYSP



NYSACOP Staff and Board of Governors



Installation banquet National Anthem



Honor Guard



Syracuse Chief Frank Fowler Addresses Attendees



Terrence Cunningham from IACP along with Chief David Zack presenting at a Town Hall type meeting



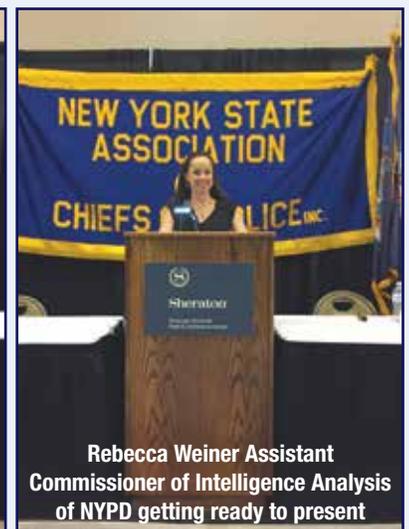
Chaplain Dennis Hayes performing the benediction at Installation Banquet



Chief (Ret.) Michael Ranalli presenting on tactical decision making



Dic Donohue (R) and Chris Dumont (L) after presenting on the Boston bombing



Rebecca Weiner Assistant Commissioner of Intelligence Analysis of NYPD getting ready to present

ing Conference in Syracuse, New York



Dennis Naylor introducing Mike Green and Cassandra Kelleher-Donnaruma to discuss Raise the Age legislation



DCJS Exec Dep. Commissioner Mike Green discussing Raise the Age legislation



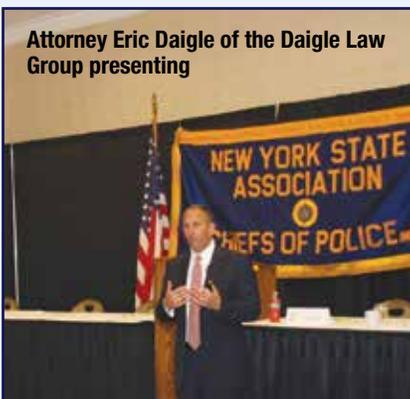
Senator Fred Akshar keynote speech



Installation banquet dais with Dave Zack



Board of Governors taking their oath of office by Senator Akshar



Attorney Eric Daigle of the Daigle Law Group presenting



Blue Courage Founder, Mike Nila presents on Blue Courage



Chief (ret.) Ron Glidden presenting on leadership



Medal of Honor recipient Kelsey Francemone with Syracuse PD Chief Frank Fowler (far left), Dave Zack, Mike Lefancheck and Margaret Ryan



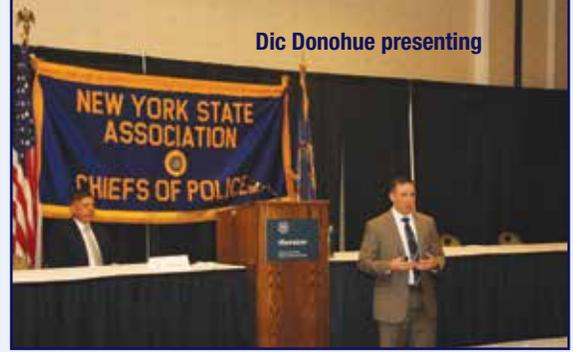
Margaret Ryan, Mike Lefancheck and Dave Zack with Senator Fred Akshar



The man behind all of the pictures:
Nick Macherone from NYSACOP and GTSC



Traffic Safety Panel Nick Macherone, Chuck DeWeese, Judge Joseph McCormack, Michael Geraci, and Michael Morris



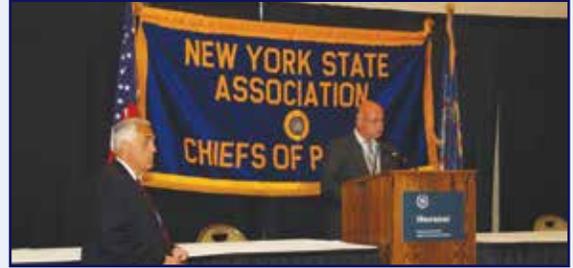
Dic Donohue presenting



RDT Director, Dennis Naylor Interviewing Dic Donohue and Chris Dumont for audio podcast



Conference Attendees listen to traffic safety panel



Captains Steve Rotunno and Dave Mirizio Presenting on Red Team Exercises

VENDOR FLOOR



Mike Lefancheck family



Past President Steve Conner and wife Laura



Members of the NYSACOP BOG on the Skaneateles Lake Dinner Cruise



Marissa D'Amore and Miles Jahnke (center) from NYSACOP with Sophia Ryan (left) and Alex Ryan (right)



Breakfast before presentations

Live Entertainment during Hospitality Night featuring the Horn Dogs Band



Then and Now: Comparing the NYSACOP Concerns of 1929 to those of 2017

BY: MILES L. JAHNKE, MEMBERSHIP COORDINATOR, NYSACOP | REPRINT FROM 2017 CONFERENCE MAGAZINE

Considering this year's conference location of Syracuse, NY, it is important that we take a minute to consider past conferences that have occurred in the Greater-Syracuse Area. In the midst of seemingly unprecedented social and political issues of the twenty-first century, particularly in policing, such consideration reveals that many of these supposedly novel problems are, in fact, concerns that have plagued police departments for decades. Thus, many of the current issues in policing are long-standing and enduring issues.

Evidence that demonstrates that many contemporary concerns are indeed enduring issues is present in the records of the New York State Association of Chiefs of Police, specifically the recorded proceedings of the Twenty-Ninth Annual Convention. Held in Cortland, NY from July 23rd to July 25th, 1929, this conference covered several important issues, including immigration, censorship, and police training concerns in the context of criminal behaviors. In a paper that was presented to and subsequently accepted by the then-sitting NYSACOP Board, Dr. Carleton Simon, a criminologist and Commissioner of Narcotics at the New York City Police Department, addressed the issue of immigration. While concerns regarding Mexican and other immigrants who cross the southern United States border generally tend to draw the attention of both the public and law enforcement today, Simon focused on the entrance of European immigrants. Reading his paper to the board, Simon asserted, "Much of crime in America is due to the laxity of our immigration laws of the past, that permitted the entry into this country of the mental and moral unfit of Europe, from which soil most of our desperate criminals have sprung" (New York State Association of Chiefs of Police, 1929, p. 12). Although this position was held approximately eighty-eight years ago, one would merely need to substitute the word "Europe" with "Mexico" to render the argument relevant in a contemporary law enforcement context. Thus, no matter one's perspective on the current immigration issue, it is important to recognize that law enforcement's concern with immigrant groups and crime is not a novel concept, but rather represents an enduring law enforcement issue (New York State Association of Chiefs of Police, 1929, p. 12).

The recorded minutes of the Cortland NYSACOP Conference (1929) also demonstrate the prevalence of the issue of censorship and its connection to crime. With the development of new information-exchange and communication media, debates regarding their censorship typically ensue. Usually positioned in the context of the First Amendment and its Free Speech Clause, contemporary crime-related censorship arguments oftentimes pertain to social media, specifically their facilitating role in cyberbullying, and violent video games. Without delving too deeply into the positions, censorship proponents typically argue that social media facilitate cyberbullying crimes by providing an impersonal and disconnected means to harass others, thereby causing significant emotional and psychological harm. Additionally, they argue that violent video

games, particularly due to their heightened level of interactivity, encourage potential criminals to perform their virtual criminal acts in the physical world, thereby harming real-life citizens. Opponents to censorship argue that the suppression of free speech and expression, in either of the above contexts, is a slippery slope. They fear the government's ability to abuse this authority and censor speech that questions and potentially undermines its authority and power. Whatever one's position on these issues, they are clearly pertinent concerns pertaining to modern-day law enforcement and crime control.

The discussion of censorship at the Cortland NYSACOP Conference (1929) focused on another medium of information exchange and communication. It attempted to address the alleged corrupting influence of major motion pictures, aka "movies." Although a largely settled issue today, Simon's statements to the board directly addressed the role of motion pictures with regard to crime, asserting that "the motion picture, as made in America today, may truly be called a model for media of expression and entertainment. I have personally examined more than 30,000 criminals and I have never known one who told me that motion pictures were in any way a bad influence in his life... [and] we do not believe that newspapers, books, plays or motion pictures are crime incentives" (New York State Association of Chiefs of Police, 1929, p. 19). Interestingly, neither Simon nor the then-sitting board advocated for increased censorship (New York State Association of Chiefs of Police, 1929, p. 19). Yet, while it is unknown whether their position may have changed in the face of today's newer media platforms, their censorship discussion does demonstrate that debates over new forms of information exchange and communication and their connections to crime are not new phenomena and represent enduring crime-related issues (New York State Association of Chiefs of Police, 1929, p. 19).

Lastly, the issue of police training and professionalization represents another of the enduring issues in policing. The efficacy of particular police reforms and their ability to institute meaningful change aside, efforts to institute and improve police reform, including police training, continue to persist well into the twenty-first century. Although many of these reform efforts oftentimes present their recommendations in a vacuum, acting as though their recommendations are novel ideas that will revolutionize policing, the discussions at the Cortland NYSACOP Conference (1929) demonstrate that that training reform efforts have occurred for decades. Captain Albert B. Moore stressed to the board the need for additional police training and police training schools, arguing that "police training has been a source of great satisfaction to every person interested in elevating the policeman's tasks from the rank of a job to that of a profession... [and that] the many added duties, the numerous changes in law and the constant demand on policemen for knowledge and information...requires us [policemen] to prepare ourselves [so] that we may be recognized not only as the first army of defense, but rather as an army of intelligent, able-

—*THEN AND NOW, continued on page 24*

FIREARMS TRAINING, continued from page 9

standpoint. The gun belt and holster worn to the range should also be worn exactly the way it is worn while on duty. There is no value in drawing from a non-retentive holster on the range if you are carrying a double or triple level retention holster at work. In

An important takeaway is that firearms training should be reality-based and designed to create an automatic response that will equate to survivability in a gun fight.

keeping with that, speed drawing should be a component of the time on the range because with firearms, you always draw and reload with speed. All concepts stated herein should be followed by every officer, including top level police administrators. When I was chief of my department, I always told the range instructor on the day that I was qualifying that he or she was fully in charge while on the range. I did not want my rank to create a barrier or a better standard of treatment for me during qualifications. Philosophically, I believe that on the range, rank holds no meaning because in a gun fight, a person's rank is rendered completely meaningless, leaving one's proficiency and tactical ability as the only matters of importance.

Qualifications should also include an off-duty course of fire designed for those officers who carry a weapon while off-duty. This allows those officers to be familiar with the considerations of different engagement distances, ammunition limitations, and lack of radio communication and backup as just a few examples. The

drilling can also incorporate tactical elements of identification so that if an off-duty officer is required to draw down on a suspect and is then challenged by an on-duty responding officer who only sees a person with a gun, the off-duty officer can reply to the on-duty officers command of "police, don't move!" with "police, don't shoot!" as he or she is complying. This can hopefully reduce situations of friendly fire from occurring.

Last, but certainly not least, all firearms qualifications should be coupled with quality weapons inspections by department armorer prior to and after qualifications. The qualification time should also include a review of all departmental policies regarding use of deadly physical force along with Article 35 of the New York State Penal Law for all members. A brief written test should be administered at the end of the review phase to verify comprehension. For proper record-keeping, all tests and scores, qualification scores with courses of fire, weather conditions, time, date, and other relevant factors should be maintained at the department. Should a legal question arise regarding firearms training pursuant to an officer-involved shooting, there is now proper documentation.

Firearms training can be an extremely comprehensive topic so this article is certainly not all-encompassing. An important takeaway is that firearms training should be reality-based and designed to create an automatic response that will equate to survivability in a gun fight. Agency administrators should verify that their firearms instructors are conducting training in a way that is consistent with this philosophy and that all officers are being developed to their fullest potential. As always, stay safe and please contact me if I can be of any assistance to you or your agency.

COUNSEL'S CORNER, continued from page 10

some in the community is not effective. We must continue to train our officers about the impact of stressful encounters and through such awareness, hope that they make sound tactical decisions.

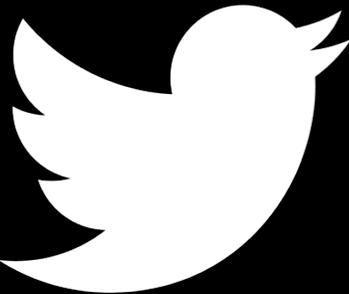
The courts do not always consistently apply the law, let alone understand the physiological effects of stress on police officers. Thorough examination of incidents can help officers to learn to handle future situations better. Was it necessary to sneak up on a house in the dark to interview a suspect in a road rage incident where no arrest was going to be made? If the ESU did breach Bah's apartment door, was it necessary at that time? I am not passing judgment in either case, instead challenging police executives to critically review incidents so as to help officers grow professionally and make better decisions, with the ultimate goal being to minimize the situations they do not control.

And when officers are forced into such situations, and criminal

or civil litigation results, counsel must understand the correct application of the law and how physiological factors affect officers' actions during use of force situations.

¹See Blair, J., Pollock, J., Montague D. et al (2011) Reasonableness and Reaction Time. *Police Quarterly*, 14:323 DOI 10.1177/1098611111423737; Lewinski, W. & Hudson, B. (2003) Reaction Times in Lethal Force Encounters: Time to Start Shooting? Time to Stop Shooting? *The Tempe Study. Police Marksman Vol 28 No. 5 Sept/Oct. P. 26-29.*; and Lewinski, W. & Hudson, B. (2003) The Impact of Visual Complexity, Decision Making and Anticipation: The Tempe Study Experiments 3 & 5. *Police Marksman Nov/Dec. P. 24-27.*

²Lewinski, W.J., Hudson, W.B., Dysterheft, J.L. (2014) Police Officer Reaction Time to Start and Stop Shooting: The Influence of Decision-Making and Pattern Recognition. *Law Enforcement Executive Forum*, 14(2), 1-16



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Progressive Policing in the 21st Century: A Blueprint for Change

By Gerald W. Schoenle, Jr., Chief of Police, University at Buffalo Police Department

We are all well aware of the need for criminal justice reform. At the heart of that reform should be police reforms, for policing is the most visible part of the criminal justice system. The good news is that progressive agencies constantly make reforms and improvements, for we know policing cannot remain stagnant.

The challenge, of course, is the way policing is set up in the United States. There are more than 18,000 police departments that all operate under different state, county, and local laws, and many more when you add in public safety departments. This article will discuss the ways some of these departments have responded to the call for change and provide a blueprint for progressive policing in the 21st Century.

States around the country have been grappling with how to improve policing, balancing community criticism about excessive force and the concerns of law enforcement agencies under increasing political pressure to tamp down crime rates. Across the country, states have been considering a range of measures to grant more rights to victims of police brutality, roll back special protections for police accused of wrongdoing and allow greater transparency of police disciplinary boards.

– Ricardo Lopez provided this overview of the situation in the *Minneapolis Star Tribune*, October 13, 2016.

So where do we begin to address these critical issues? First, start at the top: CEOs (presidents, vice presidents, mayors, and city managers) that

oversee police or public safety agencies need to have hard discussions with their chiefs. CEOs must ask, “Is our police department accredited?” and develop an understanding of the accreditation process along with the benefits of being an accredited agency. If the agency is not accredited, make certain that obtaining accreditation is part of the agency’s strategic plan. University administrators understand the value of accreditation in their numerous programs. Having a police or public safety agency that is accredited shows the agency’s and university’s continuing commitment to keeping students safe. There is no doubt that going through the accreditation process makes an agency a better organization that adheres to best practices in law enforcement.

Many states offer excellent accreditation programs. If your state does not, then the International Association of Campus Law Enforcement Administrators (IACLEA) Accreditation program is the way to go for campus law enforcement. If your department has already received state accreditation, pursuing IACLEA accreditation will take you to the next level. This program is campus law enforcement–specific and helps address the many unique aspects of campus policing. The Commission on Accreditation for Law Enforcement (CALEA) is another option for agencies, as well. With more than 18,000 agencies, we need some type of standardization, and accreditation provides that.

For agency chiefs, the accreditation process provides the opportunity to take a hard look at all facets of the department and to use this as a blueprint for change in pursuit of excellence. Accreditation standards provide the framework for developing policies, procedures, trainings, and for adopting the best practices in the industry. While the agency is going through the accreditation self-assessment process, progressive agencies pursue many of the best practices that dovetail with accreditation. The agency must have the support of the CEO to make this happen, as there is a lot of work involved and some plant modifications may be required. However, failure to pursue excellence through accreditation does not seem like an option in these challenging times for law enforcement.

One critical area that agencies must address is bias in policing. The accredited agency will have policies and trainings in this regard. One of the better-regarded programs is Fair

and Impartial Policing (FIP). This philosophy is a new way of reflecting on bias, based on an understanding that all of us have biases. The old way of addressing this was to point out bad behavior and tell cops to stop the behavior. This caused some to feel police departments are full of racist, biased officers, which is not the case.

Dr. Lorie Fridell, former director of research for the Police Executive Research Forum (PERF) and one of the leaders in this field, has developed a great research-based training program that numerous police agencies throughout the country have adopted. The training examines explicit and implicit biases that we all have and how they may cause

CEOs must ask, “Is our police department accredited?” and develop an understanding of the accreditation process along with the benefits of being an accredited agency.

police to respond as a result. I equate teaching this program to teaching ethics. I do not believe you can teach police officers (or any adults) ethics, as they have spent many years developing their ethical standards. However, you can teach ethical behavior and ethical decision-making so officers use these tools in their decision-making process.

There are several accreditation standards that mandate policy/procedures dealing with use of force. Current programs including de-escalation and tactical retreat training must be part of this. This is often a culture shift from old academy training that implied officers must immediately handle every situation they encounter. Progressive police and public safety agencies have policies that address this, and they train their officers in modern de-escalation techniques including when tactical retreat might be the best immediate course of action.

Interpersonal communications training such as Verbal Judo has proven effective in reducing the likelihood of having to use force. Many agencies have developed and trained groups of officers in crisis intervention and implemented Crisis Intervention Teams (CIT) to specifically deal with individuals with mental illness or other immediate crisis. This is an often-recommended best practice that has the potential to significantly improve citizen and officer safety (see <http://www.iacp.org/onemindcampaign> for additional recommendations).

A great summary of best practices in policing can be found by reviewing PERF's Guiding Principles on Use of Force (<http://www.policeforum.org/assets/30%20guiding%20principles.pdf>) and the President's Task Force on 21st Century Policing (https://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf).

In 2016, I had the opportunity to attend a forum led by Chuck Wexler, executive director of PERF, that discussed the recommended use-of-force principles in detail. Over the summer, I was one of several hundred law enforcement officials invited to the White House to discuss implementation of the President's Task Force recommendations. Every chief or public safety director should closely read these documents and adopt agency policy, procedures, and trainings as required to comply with these well-researched recommendations. The PERF 30 provides 30 use-of-force guidelines with which agencies should be in compliance. In addition, the President's Task Force has Six Pillars of 21st Century Policing that every agency should strive for: building trust and legitimacy, policy and oversight, technology and social media, community policing and crime reduction, officer training and education, and officer safety and wellness.

Perhaps no area is better addressed through accreditation than procedural justice. The concept implies that when fair procedures are followed there is a greater likelihood of a fair outcome. The accredited agency has gone through the accreditation standards and developed policies and procedures as required to maintain consistency, fairness, and transparency. To complement policy adoption, there must be appropriate training to make sure officers understand and follow procedures. Clearly, people feel affirmed if they are treated with respect, and there is a far greater likelihood they will accept the outcome. Every good cop has stories of being thanked after issuing a traffic ticket or making an arrest.

Failure to pursue excellence through accreditation does not seem like an option in these challenging times for law enforcement.

Agencies that put this concept into practice will also be transparent when their actions are called into question. It is critical for agencies to share information and keep the community informed. Policies and procedures must be in place addressing when and what information or videos can be released; this will go a long way in gaining the trust of the community.

The progressive agency will consider taking advantage of current technology such as security cameras, body cameras, and less-than-lethal options, while being sensitive to budget constraints. Of course nothing is a substitute for a highly trained officer who has the knowledge, skills, and abilities to defuse tense situations. Agency policy will dictate the use of this technology, in accordance with best practices, and mandate appropriate training.

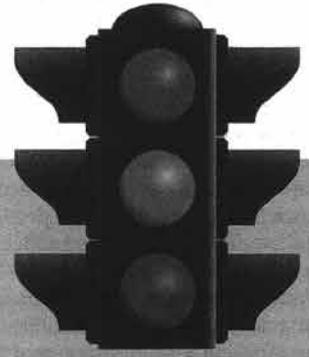
President Obama stated in his October 27, 2015, address to the International Association of Chiefs of Police, "Too often law enforcement gets scapegoated for broader failures of our society." While this is true, the progressive agency has worked with the community for months and years in advance to address community concerns so when that critical event occurs, the community will be standing by and supporting our police and public safety agencies.

So, yes, to achieve and maintain excellence, police reform is needed; it always has been and always will be. The good news is many progressive agencies are already doing it; we just need to follow their example.

Chief Schoenle has 38 years of experience in law enforcement and has been the chief at the University at Buffalo for the past 11 years. He is currently an accreditation assessor for IACLEA and New York State (NYS) Division of Criminal Justice Service (DCJS). Previously, he was an assessor for CALEA, and he was an adjunct criminal justice professor. The University at Buffalo Police Department is accredited through NYS DCJS, received CALEA recognition, and in 2016 achieved the gold standard of accreditation for campus police and public safety through IACLEA. ●

TRAFFIC ENFORCEMENT:

Calculating the Benefits to the Community



By Howard B. Hall, Chief of Police, Roanoke County, Virginia, Police Department,
and Anthony S. Lowman, Major (Ret.), Maryland State Police

Law enforcement recruits and new officers are often asked the same question repeatedly during their application process and time at the training academy—why do you want to become an officer? Most reply that they want to save lives and help their communities. As they progress through their careers and enter leadership positions, the core answer doesn't change, but the role of the individual in achieving those goals does. Often, law enforcement leaders direct the work of others instead of (or in addition to) performing day-to-day police work. In this role, leaders have the opportunity—and obligation—to direct their agency's limited resources to tasks and activities that positively affect their communities.

Local police chiefs, state troopers, and sheriffs are all faced with numerous, competing demands that include dealing with very significant issues like increasing violent crime, homegrown extremism, and opioid addiction. Given the seriousness and complexity of these problems, it is not hard to see why traffic safety sometimes takes a back seat. However, it's important to consider the extent to which traffic safety impacts the overall safety of communities. In 2015, there were 35,092 people killed in the United States in traffic crashes (a 7.2 percent increase from 2014); in comparison, 15,696 people were victims of homicide.¹ The number of victims in both of these categories is far too high, but the number of crash victims is more than double the number of homicide victims. In many communities, the odds of being killed or injured in a crash are far higher than suffering a similar outcome from a violent crime.

People want to live in safe communities. Often, safety is judged based on crime, particularly homicide. Many people consider large cities, where homicides occur in higher numbers, to be more dangerous than other places. In 2002, an article in *Governing* argued that safety is a broader issue than violent crime, based on research by William Lucy, an urban planning professor from the University of Virginia. Lucy's research posed an unusual question:

*What if, instead of being measured by itself, homicides were to be measured along with other forms of violent fatality—specifically, automobile accidents, the second major category of violent death in the United States?*²

Lucy found that the most dangerous parts of metropolitan areas are likely to be rural or exurban communities simply because the fatal crash rates are much higher in those regions. Lucy combined the figures for homicides committed by strangers and traffic fatalities from Houston, Texas, in 2000, and calculated a death rate of 1.5 in 10,000 population. Using the same calculation, he found that the rate in Montgomery County, Texas, which borders Houston, was

2.5 per 10,000—almost double the rate.³ This was due to the much higher rate of traffic fatalities in the less urban Montgomery County. The point is that while violent crime makes the news, traffic crashes often present a greater threat. While there are some exceptions, most agencies could do more to improve the overall safety of their communities by ensuring that traffic safety is a continuous priority.

The safety of officers, troopers, and deputies is a high priority for law enforcement leaders and agencies. Law enforcement officers drive millions of miles every year and are thus frequently and continually exposed to all the dangers associated with traffic crashes. A review of the Officer Down Memorial Page shows that traffic-related incidents are one of the leading causes of line-of-duty deaths.⁴ Additionally, many law enforcement personnel are injured in traffic incidents. Consistently enforcing traffic laws and working to reduce crashes not only makes communities safer, it also makes officers safer!

In addition to the risks they pose to people's safety, the economic costs of traffic crashes are tremendous. The following are some interesting—and disturbing—findings from a 2010 publication of the National Highway Traffic Safety Administration (NHTSA):

- The economic cost of motor vehicle crashes that occurred in 2010 totaled \$242 billion. This is equivalent to approximately \$784 for every person living in the United States and 1.6 percent of the U.S. gross domestic product.
- The lifetime economic cost to society for each fatality is \$1.4 million. Over 90 percent of this amount is attributable to lost workplace and household productivity and legal costs.
- Each critically injured survivor costs an average of \$1 million. Medical costs and lost productivity accounted for 82 percent of the cost for this most serious level of nonfatal injury.
- Lost workplace productivity costs totaled \$57.6 billion, equaling 24 percent of the total costs. Lost household productivity totaled \$19.7 billion, representing 8 percent of the total economic costs.
- Property damage costs for all crash types (fatal, injury, and property damage only) totaled \$76.1 billion and accounted for 31 percent of all economic costs.
- Congestion costs, including travel delay, added fuel usage, and adverse environmental impacts cost \$28 billion, or 12 percent of total economic crash costs.
- Approximately 7 percent of all motor vehicle crash costs are paid from public revenues. Private insurers pay

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Photo courtesy of Roanoke County, Virginia, Police Department.

approximately 54 percent of all costs. Individual crash victims pay approximately 23 percent, while third parties such as uninvolved motorists delayed in traffic, charities, and health care providers pay about 16 percent. Overall, those not directly involved in crashes pay for over three-quarters of all crash costs, primarily through insurance premiums, taxes, and congestion-related costs such as travel delay, excess fuel consumption, and increased environmental impacts. In 2010, these costs, borne by society rather than by crash victims, totaled over \$187 billion.⁵

Law enforcement leaders should also consider the amount of resources that their agencies devote to responding to crashes. If crashes, much like crime, can be prevented, doing so would not only reduce the number of victims in their communities, but also allow agencies to re-allocate limited resources to other activities.

Keeping community roadways safe is a multidisciplinary task that requires participation from law enforcement personnel, engineers, emergency medical personnel, elected officials, advocacy groups, and the general public. The roles of these groups include designing and maintaining roads in accordance with safety standards, developing effective laws and rules of the road, implementing response protocols to mitigate damage and injury when incidents do occur, and ensuring comprehensive public awareness. Many of these overlap, but there is one task that only law enforcement can perform—traffic enforcement. Officers are sworn to enforce the laws, including traffic laws, and are given the authority to do so. In fact, law enforcement is the only profession that is granted this authority. It is incumbent upon officers, therefore, to ensure that traffic laws are vigorously enforced to promote safe roadways.

With this information in mind, the traffic stop is arguably one of the most valuable self-initiated activities that a police officer, deputy, or trooper can perform. A single traffic stop provides five separate benefits related to public safety.

Return on Investment

Specific Deterrence-Traffic: The most basic reason for stopping a vehicle is a traffic violation. The purpose of the stop is to identify the driver responsible for the violation and to take the appropriate enforcement action. Traffic citations and the penalties that can

result are intended to change driver behavior. Even minor violations can result in hefty fines, higher insurance, and points against a driver's license. If necessary, repeat offenders may have their licenses suspended or revoked by motor vehicle authorities who use conviction data to monitor the behavior of the drivers they license. This monitoring is particularly important for commercial vehicle drivers who operate the largest vehicles on the roadways, often across many states.

Studies have shown that highly visible traffic enforcement leads to reductions in traffic crashes and changes in driver behavior. For example, a study of the Click It or Ticket Program in Massachusetts found that "tickets significantly reduce accidents and non-fatal injuries."⁶ This, of course, is one of the primary reasons for conducting enforcement in the first place.

General Deterrence to Traffic Violations: The visibility of a traffic stop gets the attention of other drivers and has the potential to change their behaviors as well. Passing drivers are likely to assume that a traffic stop is resulting in a citation for the other driver. That memory might help to change that driver's behavior, particularly if the enforcement efforts are sustained over time.

A study sponsored by NHTSA found that *the most important difference between the high and low belt use states is enforcement, not demographic characteristics or dollars spent on media... enforcement was much more vigorous in the high belt use states, as shown by an average of twice as many seat belt law citations per capita.*⁷

A number of case studies document the effectiveness of high-visibility enforcement on impaired driving offenses. For instance, a formal evaluation of the Checkpoint Strikeforce program indicated a 7 percent decrease in drunk drivers in fatal crashes associated with the overall program. The participating states of Maryland and Virginia and the District of Columbia all have maintained low fatality rates as the program has continued.⁸

Specific Deterrence to Crime: Traffic stops often lead to the apprehension of criminal suspects. Whether the offender is as notorious as the Oklahoma City Bomber or simply a wanted subject on a misdemeanor warrant, the violator contact can frequently lead to a criminal subject being arrested or the recovery of evidence, contraband, or illegal weapons. Any officer that develops the skill

to look beyond the initial cause of the traffic stop will consistently produce significant criminal arrests. For example, the Grand Prairie, Texas, Police Department determined that traffic enforcement was responsible for 37 percent of all arrests in 1994. It was also determined that 47 percent of the arrests made by traffic enforcement officers were for serious criminal offenses.⁹ This makes the traffic stop a very effective tool in areas experiencing patterns or trends of criminal activity.

General Deterrence to Crime: Many criminals commit their crimes in areas where they are comfortable. This might be near their homes or places of work or recreation. The crime can be easier to execute since the offender is familiar with the area, the people, and potential escape routes. If law enforcement can make an area uncomfortable for a potential criminal, the likelihood of a crime being committed might be reduced. What could be more uncomfortable than a police car with lights flashing in the area of the potential crime?

Studies have shown that a visible police presence has an impact on crime in targeted areas. Two studies in the 1970s and 1980s demonstrated that communities with higher levels of traffic enforcement also experienced lower rates of robbery.¹⁰ In the mid-1990s, the Peoria, Illinois, Police Department dramatically increased its traffic enforcement and self-initiated activity. These actions resulted in large reductions in reported crimes, as well as in traffic collisions.¹¹

Since 2008, agencies around the United States have been using the Data-Driven Approaches to Crime and Traffic Safety (DDACTS) model to maximize the use of resources to target both crime and crash problems. NHTSA summarizes the model's dual benefits as follows:

By identifying areas through temporal and spatial analysis that have high incidences of crashes and crime, DDACTS employs highly visible, targeted traffic enforcement to affect these areas. This model affords communities the dual benefit of reducing traffic crashes and crime, thus reducing overall social harm. Drawing on the deterrent value of highly visible traffic enforcement and the knowledge that crimes often involve the use of motor vehicles, the goal of DDACTS is to reduce the incidence of crashes, crime, and social harm in communities across the country.¹²

Research suggests that the DDACTS approach has been successful. A study of the Shawnee, Kansas, Police Department's use of DDACTS found reductions in robbery, auto theft, and auto burglary with total reductions in targeted crimes of almost 40 percent over a three-year period. Overall crashes were also reduced by 24 percent.¹³

Intelligence: Perhaps the most valuable benefit of the traffic stop is the information that it generates. Gone are the days when citations and warnings were simply filed away. Modern records management systems allow law enforcement agencies to collect information about who is stopped, what they were driving, where the stop occurred, and when it happened. This information can be extremely valuable to the investigation of crimes that might not have been discovered at the time of the stop. Crime analysts and investigators use this information to develop suspects and leads that might result in the clearance of criminal incidents.

All of this results in a tremendous return on investment from a single traffic stop carried out by uniformed patrol personnel. For these reasons, law enforcement leaders should be doing everything possible to encourage traffic stops in their communities.

A simple way to start a discussion about traffic stops with enforcement personnel is to talk about tolerance; in other words, under what circumstances do officers routinely stop vehicles? Ask this question in a room full of officers and the answers will vary greatly, ranging from hazardous violations and suspected crimes to administrative violations (e.g., expired tags). While officers have always had, and will continue to have, discretion in terms of stopping vehicles, law enforcement leaders should encourage stops for all these things.

The discussion changes when the topic of speed tolerance is introduced. Very rarely will an officer admit to stopping a speeding vehicle for less than 10 to 20 miles per hour over the limit. This begs the question of why drivers are permitted to routinely violate established speed limits by this margin, particularly in residential areas, school zones, or high crash areas. Law enforcement leaders should be working to lower this officer tolerance to enhance the safety of roadways, possibly by pointing out that the mere stopping of a vehicle does not necessitate charges being placed.

While the authors strongly advocate for traffic enforcement, they do not suggest that it should be done in a random or arbitrary manner. It should be purpose-driven and directed at social harms affecting communities.

Enforcement Done Right

The fact is that communities expect their law enforcement agencies to keep them safe and keep the roadways safe. In other words, they expect (and sometimes demand) traffic enforcement. Any law enforcement official who works with residential communities can recount the numerous, and sometimes vociferous, complaints of speeding and other local traffic violations that are brought to law enforcement's attention by citizens. These citizens rightly expect that, when complaints are valid, the agency will take action. They also expect that their children can travel safely to and from school and that their daily commutes (and those of their family and friends) can be completed in a timely and safe manner. While enforcement practices in some areas have led to criticism, the fact remains that a strong traffic safety program is integral to community policing.

The return on investment from the traffic stop becomes especially significant when the activity is deployed properly. Enforcement should be purpose driven, that is, it should be directed at a specific issue that is occurring in a community. For the most part, these problems will relate to traffic crashes, crime, or other social harms. It is important to understand where problems are occurring, as research has shown that a large percentage of criminal incidents occur in relatively small geographical areas. The first major study to arrive at this conclusion was conducted in Minneapolis, Minnesota, in the 1980s. It found that 3.5 percent of the addresses in that city produced about 50 percent of crime-related calls. Another study in Seattle, Washington, found that 86 street segments out of over 29,000 examined accounted for one-third of juvenile crime in that city.¹⁴ Observations would suggest that this incident localization is also applicable to traffic crashes, as state highway safety offices and law enforcement agencies routinely analyze the locations of crashes and identify areas and intersections with particularly high numbers of incidents. Deploying enforcement to the places where problems occur is the first step toward mitigating the dangerous effects of traffic violations. Of course, narrowing this further to target the days and times when a problem is most likely to occur will also increase the effectiveness of enforcement activities. Officers engaged in targeted enforcement should understand what they are doing and why. While it is appropriate to expect that officers will enforce violations that they observe while on routine patrol, there should be a reason for targeted enforcement and officers should understand it. It's even better when officers communicate that reason to persons being stopped. A data-driven, place-based, and purpose-driven approach is appropriate and provides the information necessary not only to justify actions—but to share with communities to promote understanding.

To be accepted by communities, enforcement must not only be data driven and place based, it must also be conducted in a legally sound, fair, and impartial manner. Simply driving in a high-crime or high-crash area is not, by itself, a reason for a stop. Over the years, many court decisions have defined what is required for a stop to comply with U.S. constitutional principles. Generally, the totality of the circumstances must lead to "a particularized and objective basis for suspecting the particular person stopped of criminal activity."¹⁵ This is the basis for reasonable suspicion, which is necessary

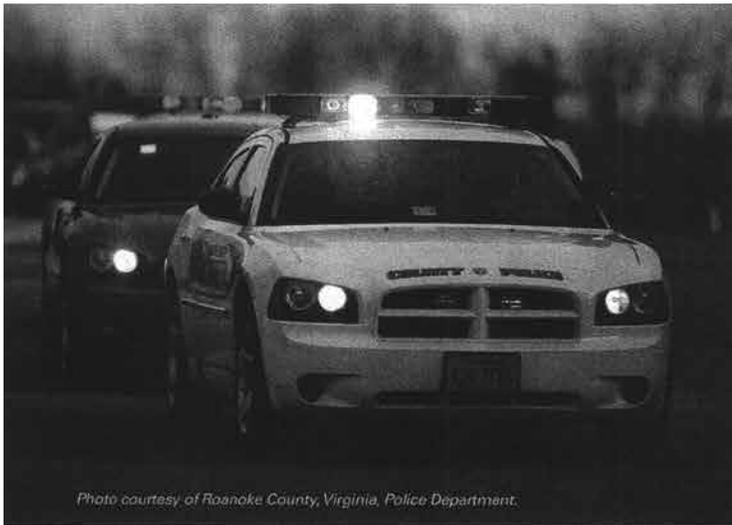


Photo courtesy of Roanoke County, Virginia, Police Department.

To be accepted by communities, enforcement must not only be data driven and place based, it must also be conducted in a legally sound, fair, and impartial manner.

before a stop is made. Fortunately, most traffic stops are made for observed violations of traffic laws and far exceed the criteria established by the U.S. Supreme Court. However, officers should be cautioned: initiating a stop for suspected criminal activity may require a more specific articulation of facts.

Fairness and consistency are critical parts of any enforcement program. The notion of fairness is embedded in the principles of procedural justice. Leading researchers on this topic have identified several dimensions of fairness:

- › *Voice*—perception that an individual’s side of the story has been heard
- › *Respect*—perception that system players treat the person with dignity and respect
- › *Neutrality*—perception that the decision-making process is unbiased and trustworthy
- › *Understanding*—comprehension of the process and how decisions are made
- › *Helpfulness*—perception that system players are interested in the individual’s personal situation to the extent that the law allows¹⁶

Most of these dimensions can be achieved through communications with the person being stopped. Although it might not be possible to change the perception of some individuals who simply refuse to understand the role of police, the overwhelming majority of people will respond positively to officers who provide an explanation for the stop and what will happen as a result.

Fairness is particularly important as it relates to the disposition of a stop. Violators should be treated as similarly as possible based on the seriousness of the offense. Officers have the discretion to use enforcement options that range from physical arrest to warnings. The option used should be proportional to the offense, with more serious and hazardous violations resulting in more severe enforcement actions.

Fairness naturally leads to the need for consistency. Agencies should consider policies and training that define enforcement options and their suggested uses. In general, officers have the following options:

Physical Arrest—Physical arrest is the most severe enforcement option available and is appropriate for serious violations, which are generally prescribed in the laws of each state. Significant traffic violations, such as impaired driving, often result in arrest. Examples of criminal violations that might be revealed during a traffic stop include outstanding warrants or possession of illegal weapons or controlled substances.

Citation—Citations, normally resulting in a monetary fine and points against a driver’s license, might be the most common form

of traffic enforcement activity. This enforcement action is appropriate for hazardous traffic violations, particularly those that are contributing to traffic crashes in targeted areas. Other appropriate uses of citations include significant administrative violations such as the lack of a license or suspended driving privilege, driving without insurance, and significant registration issues. One other area where citations are almost always appropriate is occupant protection. Seat belt use has been mandatory in most U.S. states for many years. Those who violate these administrative or safety laws are likely to be doing so intentionally; therefore, enforcement is appropriate.

Written Warning—Many agencies use or have recently implemented written warning systems. These are based on the premise that the appropriate response to a violation is not always a formal enforcement action. Violations that are minor in nature or are newly enacted may be handled more effectively as an educational opportunity for the motorist. The purpose of a written warning is to document the nature of the stop and maximize the benefits that have previously been discussed. Appropriate uses of this tool include minor or less-hazardous moving violations, administrative issues such as expired tags, and speeding violations where the motorist is only slightly above the posted limit.

Verbal Warning—Verbal warnings have existed for as long as traffic stops. Even in agencies without formal written warnings, verbal warnings are being used. It is simply a function of officers trying to achieve fair outcomes for their enforcement stops. When written warnings are allowed, verbal warnings should be minimized as they don’t result in a record of the stop.

It is important that agency leaders take the time to consider policy and training related to the importance of traffic enforcement, procedures for traffic stops, and appropriate outcomes. The New Jersey State Association of Chiefs of Police has developed a model policy entitled “Traffic Enforcement Tolerances & Latitude” that addresses these issues. It discusses a variety of violations and enforcement options to ensure fair and consistent enforcement. It does not, however, supplant an officer’s judgement or discretion in dealing with the myriad of issues that can arise from a stop.¹⁷ Many of the external and internal issues that traffic stops have been known to cause could likely be avoided by having simple conversations about these issues. Both officers and communities should understand what a traffic stop entails, why they are performed, and why certain enforcement options might be used. This can be accomplished with a little planning and good communication.

Conclusion

Using traffic enforcement as an effective tool to increase public safety by reducing both traffic crashes and crimes takes time to plan and properly implement. Fortunately, there are numerous resources that can help:

- › Every U.S. state has a highway safety office that is responsible for distributing highway safety grant funding. Many of these offices have law enforcement liaisons and other staff or resources to help agencies implement traffic safety programs. A list of state offices, as well as other highway safety resources, can be found at www.ghsa.org/about/shsos.

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- The National Highway Traffic Safety Administration maintains a website with a large amount of information on all aspects of traffic safety, at www.nhtsa.gov/road-safety.
- The IACP posts a variety of related information and resources on its website at www.theIACP.org/TrafficSafety.
- Many U.S. state chiefs' and sheriffs' associations can also help agencies. For example, the Virginia Association of Chiefs of Police coordinates the Smart, Safe, and Sober program (www.smartsafeandsober.org). The Maryland Chiefs of Police Association, Maryland Sheriff's Association, and the Maryland Highway Safety Office recently coordinated on the publication of the *Law Enforcement Executive's Guide to High Visibility Enforcement*, which can be found at www.nlelp.org/wp-content/uploads/2016/09/LE_Exec_Guide.pdf. ♦

Notes:

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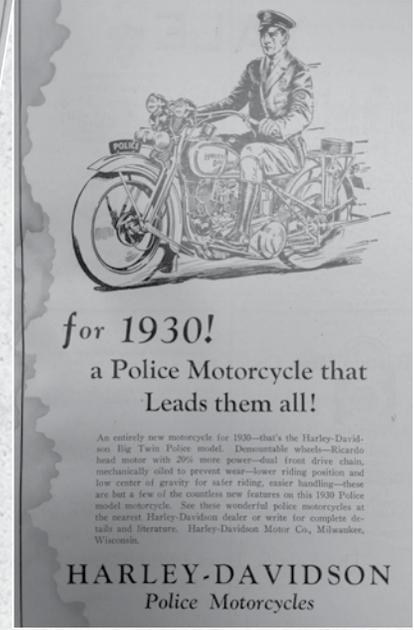
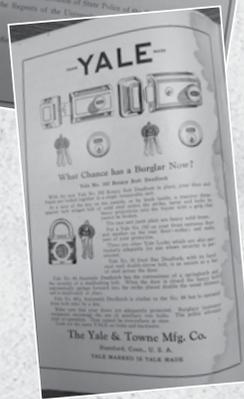
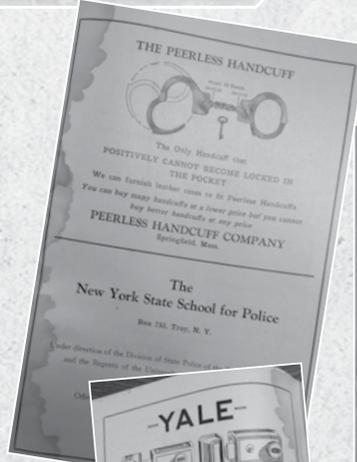
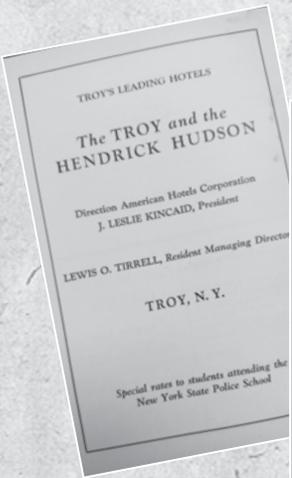
Cortland NYSACOP Conference Book (1929)



Twenty-Ninth Annual Convention of New York State Association of Chiefs of Police. Cortland.



TIMOTHY D. MCCARTHY, U.S.A. President



—THEN AND NOW, continued from page 15

bodied and thoroughly professional men armed with a thorough knowledge of our duties and coupled with a sound judgement in their execution” (New York State Association of Chiefs of Police, 1929, pp. 28-29). With Moore’s statements in mind, it is clear that efforts to improve police training are not novel endeavors, but rather are a part of an enduring issue pertaining to how to best train and professionalize police. However, of particular interest is that the discussions at this conference do represent some of the early efforts to formally train police officers. They demonstrate that the New York State Association of Chiefs of Police has, over the course of several decades, remained committed to ideal of instituting and improving police training.

While it is often tempting to see contemporary issues as

completely novel and unprecedented problems, the records of the Twenty-Ninth Annual NYSACOP Convention in Cortland, NY (1929) demonstrates that many current issues are also enduring ones that have persisted for decades. Whether regarding immigration, censorship, police training, or a plethora of additional concerns, many problems have significant historical origins. Thus, as we look back at conferences in the Greater-Syracuse Area, it is important that we look at many of the issues once addressed. They may just help us solve today’s problems.

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