

# **2010 NORTH CAROLINA POLICE OFFICER LEGAL SURVIVAL GUIDE**

**PROTECTING LAW ENFORCEMENT OFFICERS IN THE NEW  
MILLENNIUM: POLITICAL ENDORSEMENTS; LEGAL  
UPDATES FOR OFFICERS; PROTECTING OFFICERS  
ENCOUNTERING INVESTIGATIONS; OFFICER SURVIVAL  
AND NEW ADVOCACY TECHNIQUES; USE OF FORCE LAW;  
GARRITY ISSUES; AND STAYING ALIVE LEGALLY.**

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***"Extremism in the defense of liberty is no vice; moderation in the  
pursuit of justice is no virtue." Senator Barry Goldwater, 1964.***

***The McGuinness Law Firm***  
***Counsel For Law Enforcement Officers***

The *McGuinness Law Firm* was founded in 1984 and concentrates in representing members of America's law enforcement profession in all kinds of legal disputes. The Firm has litigated hundreds of law enforcement cases before numerous state and federal courts and administrative agencies. The McGuinness Law Firm provides specialized police trial and appellate advocacy, advice and counsel, negotiation services and other individual officer protection services. The Firm also provides research, education programs and consulting for officers and police associations.

Mr. McGuinness earned his Board Certification as a Civil Trial Advocate by the National Board of Trial Advocacy. In 2005, Mr. McGuinness was awarded the national *Pete Lawer Award* by the National Association of Police Organization for outstanding law enforcement advocacy. Mr. McGuinness has earned the highest rating for legal ability and ethics by the Martindale-Hubbell law directory. See [www.martindale.com](http://www.martindale.com). Mr. McGuinness was designated as a preeminent attorney in the fields of constitutional law, and civil and criminal trial practice in the *Bar Registry of Preeminent Lawyers*.

The McGuinness Law Firm has appeared as counsel before the U.S. Supreme Court, U.S. Courts of Appeal for the First, Second, Third, Fourth, Fifth and Seventh Circuits, all federal courts in North Carolina and Massachusetts, all state appellate courts in North Carolina and Massachusetts, other courts and numerous administrative forums adjudicating police issues.

Mr. McGuinness is a former prosecutor and counsel for the United States government. Mr. McGuinness has served as an adjunct law school and university professor, author of several dozen scholarly articles, and instructor to the law enforcement profession and lawyers throughout the country in law enforcement liability and police employment law. Mr. McGuinness has regularly taught seminars at Georgetown University Law Center in Washington, D.C., the Practicing Law Institute, several bar associations and numerous police associations throughout the country.

The Firm's primary investigator, James P. McGuinness, has over thirty years of law enforcement experience and eighteen years in officer advocacy. He is also a State Bar Certified Paralegal. Zilla Hester has served with the McGuinness Law Firm since 2001, and also is a State Bar Certified Paralegal. Renea Stanley serves as an Administrative Assistant.

The *McGuinness Law Firm* is supported by state of the art technology and a team of experienced professionals including specialized investigators, expert witnesses and consultants in use of force, officer conduct, incident scene reconstruction, forensics, psychology, psychiatry, ballistics, engineering, behavioral science and in other disciplines.

The *McGuinness Law Firm* is headquartered in Elizabethtown, North Carolina. The law firm background is more fully explained on our web site at [www.mcguinnesslaw.com](http://www.mcguinnesslaw.com); telephone: 910-862-7087.

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## **A. THE GROWING PROBLEM OF OFFICER SURVIVAL**

The new millennium has brought numerous changes to law enforcement workplaces throughout America. Anti-law enforcement interest groups continue to initiate new challenges. We must aggressively respond with new counter-offensive measures both in individual disputes and in broad strategic advocacy.

Serving as a North Carolina law enforcement officer often thrusts one into a dangerous world of endless investigations, accusations and complaints. These dangers often initially consist of physical threats to the officer's personal safety. Then, following an altercation (or lack thereof) with a suspect, the dangers broaden to expose the officer to numerous legal threats from as many as nineteen different sources.

Some of the threshold problems are that law enforcement officers are widely disrespected by most elements of American society. While we expect that criminals will disrespect the law enforcement profession, the criminal element is not a prevalent threat to police officers. The most prevalent and most dangerous threat to the law enforcement profession is the cumulative affect of at least twenty adversarial forces that often work together to challenge and take legal action against officers.

Allegations of misconduct against officers are rapidly growing. Advocates for officers must better prepare to meet these growing legal challenges. The available law to protect officers has been whittled away by extremist courts. To properly protect officers, we must wage a sustained campaign of advocacy from grass roots to the White House.

One of the most troubling trends is the increasing tendency to criminalize the law enforcement process with increasing criminal investigations and indictments against officers. Officer advocates used to be labor advocates. Officer advocates must now include specialized criminal defense counsel and investigators. Prosecutors in many jurisdictions have become more prone to criminally indict law enforcement officers than ever before.

Federal indictments continue to plague us even after state criminal charges have failed. Living the nightmare of an officer's life now includes dealing with multiple criminal investigations in routine matters. Even the most minor alleged excessive force invokes a full criminal investigation, often both state and federal.

Accusations against officers usually become high profile "hot reading" for the media. That usually sparks interest groups and others to weigh in on that "murderous police shooting." Before you know it, the officer has been massacred in the media.

The broad and almost never-ending range of prospective civil and civil rights claims against police officers is summarized in Avery, Rudovsky and Blum *Police Misconduct: Law and Litigation* (3rd. ed. 1999). They outline prospective law enforcement liability as follows: negligence claims, claims based on arrest and detention involving warrantless arrests, arrests under unconstitutional statutes and ordinances, malicious prosecution, abuse of process, retaliatory prosecution, illegal searches and seizures, illegal restraint, false arrest, abuse of process, deprivations through improper use of informants and undercover agents, deprivation of rights based on retaliatory actions, illegal interrogations, denial of medical attention, denial of counsel, verbal abuse and harassment, failure to provide police protection in various contexts including domestic violence, conspiracies to violate civil rights, interference with family relationships, police pursuits, failure to disclose or act upon exculpatory evidence, negligence or deliberate indifference in the establishment or maintenance of roadblocks, misuse of weapons, defamation, invasion of privacy, discrimination and more. Are you protected from this potential avalanche of charges against you? Are you ready to defend yourself?

Through this manuscript, we will offer ideas and suggestions about how an officer and his/her legal team should respond to investigations. Each situation is different and the strategy to protect the officer must be individualized and tailored. There is no such thing as the "best general way to respond."

We offer ideas and possible suggestions of how we can work together to reduce the threats to officers in the legally dangerous environments in which officers live. We must explore new means of advocacy, both in legislative and executive branch lobbying.

*"Extremism in the defense of liberty is no vice; moderation in the pursuit of justice is no virtue."* Senator Barry Goldwater, Republican National Convention, 1964.

## **B. POLITICAL SCIENCE 101 FOR COPS: LAW ENFORCEMENT ASSOCIATION POLITICAL ENDORSEMENTS AND THE CRUCIAL NEED FOR REFORM**

Why should police officers, through their representative associations, engage in the political process? How should police associations most effectively advocate for officers? Why not just sit on the political sidelines and let other groups decide which elected officials are best for officers and their families?

Law enforcement officers are still the most abused, neglected, disrespected, maligned, maimed and murdered group of public servants in America. Cops generally do an excellent job in protecting others, but do poorly in protecting themselves politically. Teachers and other public servants are far ahead with many more substantial procedural and substantive rights. Why? What do they do different? The short answer is that they seriously and aggressively advocate within the political system. They have aligned themselves with officials who respect and fight for teachers. How about us? Where can we get some officials who will stand up with us?

Many officers say that politics is a dirty game, and they don't want to get involved. War too is dirty. Dealing with dirt is part of life especially for those who want to succeed. In life generally and as a police officer, you get what you fight for and earn. Officers can justifiably be frustrated politically.

The degree of labor and civil rights protections for police officers is largely dependent upon the political process at the state and federal levels. Legal rights are prizes won by those who have the most political clout. Those who fight hard and advocate politically for their needs are likely going to prevail over those who sit on the sidelines. Those who win real battles over legal rights typically do so by *organization, leadership* and other essential traits.

Political strength requires a number of key ingredients: organization, leadership, commitment, sustained advocacy and real courage. In order to succeed in political affairs, police associations must examine these components and find the right leaders for the team. To become organized, the association needs leaders who are willing to communicate, meet, confer, plan, strategize, travel, debate, work hard, seek and build consensus, rise again after preliminary defeat, never give up and more. Bipartisan efforts are crucial.

Step one in winning the political war of rights for police officers begins with *organization*. There are mega thousands of American police officers who do not belong to any organization. We have to work to at least minimally involve them and get them on board. The greater the numbers of officers, the greater the potential for at least numerical strength.

Governmental agency lobbying groups develop political clout so they can better protect the government itself. Most police management groups do not sit on the political sidelines. Rather, they develop political clout by working the politicians to seize more power for themselves and oppress the rights of the rank and file. They do it all the time.

Governmental power at all levels has grown in recent years. This growth of government power has pervasively trampled on and eroded the rights of police officers. The last decade has shown a steady decline in constitutional protection for police officers. Who has done this to us?

Many so-called "law and order" judges have stripped officers of their rights. Most so-called "law and order" legislators are full of hot air when it comes to the rights of officers as they usually duck and run. The same politician who will pray over the body of a fallen cop at a high profile funeral did not give a damn about the cop until he was killed in the line of duty.

Who will stand up for police officers and fight for political clout to address critical officer needs? The American law enforcement profession must not only get off the sidelines, we must intelligently get in the struggle for political power or the plight of officers will deteriorate even more.

Perhaps the most significant component of police officer survival advocacy is selecting the right team of elected officials who will enact critically necessary reform. We need legislators who will support our real issues, rather than the fictional imaginary issues. We need a new breed of judges who will interpret our Constitution fairly and with respect for police officers.

Evidence demonstrates that the law abiding public generally supports the law enforcement profession. The public is aware that police officers often have an insider's perspective on the criminal justice system. Political endorsements by police associations are often highly valued by the law abiding public, especially in judicial races.

We have excellent opportunities to advocate for reform if and only if we politically activate on our key issues that matter most. Like most other benefits of life, police association success necessitates some smart leadership with courage and lots of long weekends working to rid ourselves of officials who keep lying to us and not supporting legislation for officer safety and rights.

Unless law enforcement officers substantially organize politically to support truly pro-officer candidates on labor and civil rights issues, the law enforcement profession will never be treated with respect.

## **1. What Are The Issues That Matter Most?**

What issues should be used in the police political endorsement process? Isn't the foremost concern to be reasonably safe on the job, treated fairly, earn a decent wage and get to go home alive after each shift?

*Aren't employment rights and civil rights really our predominant concern? If so, shouldn't we align ourselves better with elected officials and candidates who support these specific rights? Don't we need a new group of political friends in light of how Washington has treated us in recent years?*

The *Public Safety Employer Employee Cooperation Act* has been a top priority. This bill overwhelmingly passed the House of Representatives with 314 votes. Senators Judd Gregg and Edward Kennedy led the charge with extraordinary efforts and advocacy. However, after some compelling floor speeches, President Bush announced his intent to veto the Bill. The Bush Secretary of Labor and Attorney General came out fighting hard against the Bill.

We must better embrace the key issues as fundamental *civil and labor rights*. These rights boil down to basic human rights. These rights include the right to be free of retaliation, political patronage, discrimination, disparate treatment and be free of arbitrary discipline without just cause. These rights include the right to organize, advocate, engage in free expression and free association, the rights to equal protection, due process and the right to counsel. These rights came long ago for other public employees. Why not for police officers? Because other public employees have more effectively politicked for their needs and because the so-called law and order politicians have continuously sold us out.

Who should we endorse and why? The answer to the why question is that if we do not more effectively politically activate and advocate, American police officers will continue to be the most abused public servants. We must seek out and find those candidates who will deliver for us on our critical needs of labor and civil rights. We must support those who will take a stand for us on our key issues.

Most politicians know what our real issues are but try to dodge them. We must be careful and stay focused on our issues as opposed to general political issues. Unless our endorsements are keyed to our specific issues, candidates and politicians will know that we are not serious about our issues. *They must be shown that endorsements are directly related to where they stand on our issues.* If endorsements are ever given based on general or unrelated political issues, the whole endorsement process will be destroyed. We have to constantly pull the politicians to our issues.

Police associations must be very careful in making political endorsements. We must not buy into self-ordained buzz word labels. The real political test is: *What is the candidate's actual record on labor rights and civil rights?* Where do they stand on the real issues, not the secondary "law and order" stuff? Is the death penalty really so important; or shouldn't we be worrying more about if the officer is going to get to go home safely and have some minimum rights to protect his or her job?

Most candidates for elected office have records of some kind. Those records may be full of gold, or crap, and we must find out. A simple Google search can get us started towards understanding someone's real history. It seems that one's record is usually a better predictor of their positions and character, as compared with what they say in an interview.

We must not confuse certain criminal law issues with officers' rights issues. Many claim to want vigorous enforcement of our criminal laws. Why don't they also want vigorous enforcement of constitutional law for police officers when the officers are legally attacked? Why don't they want officers to at least have as many rights as do criminal suspects?

A politician vowing to send the drug dealers to prison or hell does not tell us where he/she stands on *our* issues. Therefore, we must specifically ask about *our* issues and reasonably insist on answers.

Many so called "conservatives" claim to "strongly support law enforcement" but in fact are rigidly anti-officer on our key issues. Most hard core conservatives despise organized labor or any group who advocates for labor or civil rights. If you examine their voting records and the hard evidence, you will see how you have been lied to for decades.

The "conservative" label is a dangerous misleading misnomer in the context of police politics. Self proclaimed labels are typically meaningless. Look what the so-called self-proclaimed conservatives have done with the Supreme Court on issues relevant to officer safety and rights. We must not endorse anyone based on labels or general political philosophy. Rather, we must objectively stick to our issues loud and clear.

What about legal and safety rights for cops, including due process, equal protection, expression, free association and other fundamental rights? Many so-called "conservative" jurists fail to apply settled precedent for police officers, and have overruled and shredded many constitutional rights of officers. Are they really our friends? We should ignore their labels but research how they have ruled on our crucial issues.

## 2. The Endorsement Process

What process works best for making candidate endorsements? The process must be fair bipartisan and objective. The association must address its core values in the process. The logistical process may vary widely depending upon each office involved. Written questionnaires can be effectively used to stake out candidates on some issues. In order to be effective, it is essential that written questions be specific and challenging. By forcing the candidate to respond in writing also adds a little insurance to the position stated.

We must determine whether the questions are being answered or evaded. We must ask hard questions in order to determine whether they will work to develop sensible answers and whether they are with us on the key issues. We must develop some "camouflaged" questions snooping for hidden core beliefs.

We must ask them about their records and compare their answers with the published record. We must be fair and reasonable, but we must vigorously cross examine them. We must examine the *actual records* of candidates. Even if they have not served in elective office before, they still may have a relevant record or at least a record of life experience.

The development and framing of the actual questions necessitates time, skill and serious effort. We can present them with proposed legislation and ask if they will vote for it. When you write them a thank you letter for meeting with you, remind them of their commitment to vote for the bill.

Framing questions for judicial candidates is more difficult because judicial ethical rules require that judicial candidates avoid staking out positions on certain matters if they are likely to come before the court. We must try to avoid judicial "stake out" questions on particular fact scenarios. However, we can ask philosophical questions and questions about prior decided cases. We can and should ask about the meaning of constitutional provisions and underlying values.

While questionnaires are helpful, nothing beats a *face-to-face* interview for fleshing out questionnaire answers and posing other questions. It is probative to confront them with hard questions. Often the preferred ideal is to use both a questionnaire on some questions and save some for the verbal combat. We must test them.

### **3. Carrying Out The Endorsement**

Once our candidates are elected, we must not forget them. Rather, we must begin to work with them. We should attend the Inaugural Ball. We should go to events where they are appearing and slap backs with them. We must visit with them in their posh offices. We must write to them. We must develop a relationship with them.

After making an endorsement, we must deliver the association's support for the candidate. An endorsement is supposed to stand for something. If they are worth endorsing, they are worth working to elect. We must do something to show that our endorsement is real.

Political strength comes from a combination of efforts including the key ingredient of building relationships and rapport. We should work to build a political team with the endorsed candidates.

We must develop an endorsement support plan to implement the endorsements. We should lay a paper trail to show the endorsement is being carried out in the field.

We must be reasonable; we cannot have it all. We must work with elected officials. We must teach them and lead them to our positions. One hand washes another.

Building and maintaining political relationships is a year round process. Communications are essential; not too many and not too few. We cannot elect them and expect them to just take care of everything. We must stay on top of them. We cannot be too pushy but we must lead them. We must be diplomatic. We must be political.

### **4. Conclusion**

Remember the words of President Lyndon Johnson, "come, let us reason together." We must send the message that the law enforcement profession is not content being second class citizens anymore and then, go forward and back up that message - in the Congress, in the State Legislature, in the courts, and beyond. The endorsement process will work and make progress only if we stick to our key issues and tie endorsement decisions to those narrow issues. Otherwise, the politicians will not feel compelled at all to support our positions and issues.

There is only one solution to this longstanding problem: we must work harder and smarter than ever to get rid officials who have harmed the law enforcement profession by action or inaction. We must hold elected officials accountable. We must take them out of office when they don't do right by us. We must find some new friends. Look what our so-called friends have done to us, rather than for us.

We must not accept defeat and disrespect by politicians because the framers of the United States Constitution gave us a system to politically advocate for reform and change. In order to effectively politically advocate, we must call for and carry out true reform from City Hall to the White House and all points in between.

### ***C. THE NEED FOR NEW LAW ENFORCEMENT ADVOCACY BY OFFICERS***

The day to day treatment of officers has never been worse. Many of our supposed political friends in Washington and Raleigh are nothing but talk. There are other public officials who have seriously embraced our labor and civil rights needs.

Where do we go from here? When in a war, one often has to reevaluate the weaponry, especially where battles are being lost. Some of the new weapons can be new friends who have established records of supporting labor and civil rights.

The last twenty years have produced among the most anti-law enforcement judges in the history of jurisprudence. The last twenty years have produced many legislators who do not have a clue about what law enforcement officers have to endure. Governmental agency administrators and bureaucrats often do not even know the basic duties of law enforcement officers. However, as soon as some claimed "victim" shouts "police brutality," out come the experts from the media, interest groups and more. The target in the cross hairs is almost always the officer.

Unless we develop some new strategy and additional means of advocacy, the law enforcement profession will continue to rapidly deteriorate. In its present state, do you want your children going into law enforcement?

Here are some ideas for consideration.

We must do something to help promote a better understanding of how terribly police officers are treated. The law abiding general public tend to strongly support the law enforcement profession, but they are not educated on what our real issues are.

We must better embrace our issues as fundamental *civil and labor rights*. Our many different needed rights boil down to basic civil rights. The right to organize, advocate, engage in free expression and free association, the rights to equal protection and due process and the right to counsel. All of these rights came long ago for other public employees. Why not for officers?

Our lobbying should not be limited to traditional legislative lobbying. We must better focus on lobbying our executive branches of government.

We must be very careful in making political endorsements. We must not buy into self-ordained labels. The real political test is: what is the candidate's actual record on labor rights and civil rights?

We must better lobby for quality judges who understand the dangerous world of law enforcement and who respect officers and traditional constitutional values.

We need more teamwork, both within our associations and with other similar public employee associations. We must help our fallen comrades. We must show up at an officer's unemployment hearing or grievance. When an officer is under attack, the enemy might not be so quick to falsely allege if they realize that targeting one officer is like targeting us all.

We must make a commitment for some minimum time to organize law enforcement in our communities. A small dedicated team can work wonders. Strength is often dependent upon numbers. Organization is the key.

Focus on elected bodies who can legislate help for the law enforcement profession. These are your state senators and representatives, but also your Governors and federal officials.

Start a local political action committee. Educate your local officials on what really matters for the law enforcement profession.

Encourage retired law enforcement officers to run for office. Then get out and work to elect them.

Educate yourselves thoroughly. Prepare and arm yourself with recent verifiable data. Advocate with evidence and passion.

Ask to meet with your local senator and representative. Take a dozen cops with you, with spouses and some children. Treat them with complete respect. Quote Lyndon Johnson: "Come, let us reason together." But let them know you mean business. Stay in touch with them.

Talk to your local judges on the District and Superior Courts. Take them to breakfast, not just at election time, but annually. Let them feel your pain. Tell them that we have hope that our State Constitutions will not be destroyed as the Federal Constitution has been destroyed by extremist federal judges completely out of touch with reality.

Get your spouses on board. Your family is most important, but they can spare you a few weekends a year.

Make an effort to educate the media. Some reporters are among the most uneducated about the basic duties of police officers. In journalism school, apparently they do not teach much about the basic principles of criminal justice and law enforcement. Take them on a ride along.

We must write professional letters to the editor for your local and regional newspaper calling attention to the oppression of officers.

We must constantly attend political functions. We must shake some greasy palms and slap backs. We must let them know that we are not only in the political ball game, that we are there to win it.

#### ***D. WHO ARE THE MULTIPLE TEAMS OF LEGAL ADVERSARIES AGAINST OFFICERS?***

Officer often have to combat not one, but more than a dozen different potential adversaries, and many at the same time. The following are the regular adversaries:

- 1) The State Bureaus of Investigation (an SBI "team" is typically organized to investigate accused police officers).
- 2) The local District Attorney.
- 3) The Special Prosecutions Unit of the State Attorney General and others within the Attorney General's Office.
- 4) The Federal Bureau of Investigation.
- 5) The local United States Attorney.
- 6) The U.S. Department of Justice, including the Civil Rights Division, the Criminal Division and the Law Enforcement Prosecutions Section.

- 7) The Criminal Justice Education and Training Standards Commissions.
- 8) The officer's employer and agency including the agency and governmental lawyers.
- 9) The Internal Affairs or Professional Standards Units of the employing police agency.
- 10) The lawyers and/or mouthpieces representing the persons who complained about the officer.
- 11) The lawyers representing interest groups who are weighing in on the alleged police incident.
- 12) Politicians at the local and/or state levels, who decide to weigh in for publicity or other political advantage.
- 13) The news media including radio, newspaper and television.
- 14) Other licensing bureaus or agencies.
- 15) The medical or other purported professionals with whom the officer's employer requests that the officer submit to examination by or interview with.
- 16) The laboratories, experts and other specialists who may test or examine the officer.
- 17) The Employment Security Commissions, who may deny unemployment compensation benefits to fired officers.
- 18) Other state or federal agencies who may accuse the officer of violating some labor, safety or other alleged condition.
- 19) The President of the United States and/or the Governor. Both President George Bush and Governor Mike Easley's administration took decisive and direct actions against the law enforcement profession. For example, President Bush explicitly threatened to veto the top legislative priority, the *Public Safety Employer Employee Cooperation Act*. Governor Easley publically pronounced defiance of a reinstatement order obtained by a state trooper. In another case, Governor Easley's press staff dictated the firing of another trooper.

How do we best deal with all of these forces? By being organized and ready to advocate legally and politically.

Many of these adversaries actively and openly work together against the officer under scrutiny - and many of them brag about their tremendous resources to investigate, charge, prosecute and decertify officers.

Officers often have to defend themselves in multiple forums including state and federal, civil, criminal, administrative, internal, and the media. They can be and often are subjected to multiple hearings in numerous different forums, often having to testify again and again. The officer may prevail in multiple hearings, then lose one and still be completely destroyed.

Officers must stand vigilant and be ready to defeat a legal challenge when it arrives. The accused officer must develop his or her legal team so they can intelligently investigate and evaluate the critical incident or other dispute.

### ***E. OUR TEAM: THE OFFICER'S TEAM OF ADVOCATES***

Officers must have a team of advocates.

- 1) Specialized legal counsel who are experienced in law enforcement liability issues and state and federal criminal law.
- 2) Specialized private investigators who are experienced in police liability and unique officer investigative needs.
- 3) Various expert witnesses and specialized consultants.
- 4) The officer's supporting police association.

For our team to win, we must work together and efficiently. We must never rest until officers are treated like human beings. We must never rest until we successfully lobby for better legal rights and protections, like most other employee groups already have. We must never rest until we elect and have appointed a better judiciary, who understand our split second decisionmaking world. We must never rest until we lobby for better appointed commanders and colonels. We must never rest until we elect and have appointed better prosecutors.

### ***F. THE 48 HOUR CRITICAL INCIDENT AFTERMATH AND PRELIMINARY ISSUES***

Experience has demonstrated that the 48 hour period immediately following the incident is the most critical, where strategic decisions often predetermine the ultimate outcome of the dispute. In this initial period, the officer advocacy network must function properly in order to adequately protect the officer from the multiple threats.

Complaints against officers often arise following an encounter with a suspect. If there is an alleged injury of the suspect, a rapidly evolving investigative process will usually immediately confront the officer. The initial period following a critical incident is vitally important for the officer. The officer's team must be on the job and ready to strike with immediate help for the officer.

A specialized body of constitutional and other law governs investigations into officer conduct. However, in this process, the officer often becomes an accused and basic constitutional principles protect the officer from self-incrimination and from retaliation for invoking that constitutional protection.

Law enforcement advocates should develop a strategic plan upon receipt of the basic information following a critical incident. Counsel must conduct an immediate legal evaluation to assess the risks. An investigative plan must be developed.

Every law enforcement association must have a network in place, 24 hours a day, 7 days a week, to be available to counsel, advise and help officers.

We must get our representatives to the incident scenes immediately, not later. *Time is of the essence.* Tomorrow can be too late. We must beat the state criminal investigators to the scene.

We must better train and educate our younger officers, who don't have years of practical experience. Do they know what to do when they have to use deadly force? Many of them don't even call for help. They think they can handle everything by being their own lawyer, their own investigator and their own advocates. Then, they get indicted and are stuck with their mistakes.

In shootings and other critical incidents, there is almost always a criminal investigation into the officer's conduct. Who is in control of the investigative process? Advocates representing the officer should reasonably take charge with immediate incident scene analysis, witness interviews, document search and strategic planning. Criminal investigators are entitled to conduct their investigation without interference; and so is the officer. The officer's representatives should immediately start work.

An officer is not under any duty to submit to an interview or otherwise cooperate with an agency investigating the officer for possible criminal misconduct. The officer cannot be lawfully punished for declining to waive his/her rights or for refusing to provide a statement in a criminal investigation.

The officer is entitled to preserve his or her Fifth Amendment rights and an officer should carefully consider any waivers of those rights. Legal advice is necessary before important legal rights are waived.

In an internal investigation, if the officer wants to retain his or her job, the officer has an obligation to cooperate as long as the investigation is proper and within the scope of *Garrity*.

Virtually every incident where an officer uses force gives rise to a prospective criminal charge of assault and battery, a civil rights charge of excessive force and an internal or administrative charge of misconduct under the law enforcement agency's internal rules. Federal indictments under 18 U.S.C. 241 and 242 for excessive force and other police conduct have become a constant threat to the law enforcement profession.

What happens when a officer becomes the subject of a criminal or administrative investigation as a result of the performance of his or her duties? The officer does not have to participate in the *criminal investigation* by providing a statement because the officer enjoys constitutional protection to prevent coerced statements to criminal investigators. Unless and until it is strategically wise to do so, officers need not interview or provide statements to criminal investigators.

Unless seized and placed in official custody, an officer need not remain in the aftermath of a critical incident for the convenience of the criminal investigators. The officer must focus upon and protect his or her own individual legal interests.

The decision to waive constitutional rights and make statements to criminal investigators should only be done following consultation with the officer's legal counsel. Many instances will warrant submitting to interviews by criminal investigators. However, legal consultation is necessary to make this critically important decision.

The timing of interviews given to criminal investigators is crucial. The officer should not be hoodwinked into an on-the-spot waiver of constitutional rights while under the stress of a critical incident, especially if it involves a shooting. In instances where it is wise for the officer to provide a statement to a criminal investigator, it should not be done under the stress of the incident. It is generally best for the officer to have plenty of time to calm down, relax, confer with counsel, have an investigation conducted, and then interview if appropriate to do so.

Legal counsel should be present at all criminal investigative interviews. The interviews should ordinarily be recorded, preferably videotaped.

### ***G. RESPONSES TO THE INVESTIGATIVE PROCESSES***

The first response of an officer under investigation should be to organize his or her team of advocates. Specialized legal counsel and a specialized investigator must be quickly selected.

An advocacy plan must be developed. Many important questions must be addressed. Who will deal with the news media? Does the officer need to confer with a counselor or psychologist if the stress is severe? The officers' family must be supported and counseled. Is a minister needed to assist?

The officer's advocacy team and the officer should never underestimate the trauma and duration from the forthcoming criminal and internal affairs investigations. While it might go away in a few months, it may also take several years.

In light of all of this, how should an officer respond to a critical incident? When officers are confident that they have done nothing wrong, many will be of the mind set that they "need to cooperate" because the failure to do so will make them appear guilty. This common mis-perception can be extremely dangerous to officers.

To interview with criminal investigators or not? A decision regarding whether and to what extent to voluntarily waive constitutional rights and voluntarily provide non-required information to criminal investigators and other authorities is a critically important decision that has to be made on a case by case basis. It would be imprudent to suggest any general methodology to be employed in arriving at the answer to this important question.

An officer is of course free to waive all of his or her constitutional rights and make a statement to a criminal investigator. There certainly are appropriate cases where this approach may be warranted although safeguards must be employed in every interview. However, that decision should not be lightly made or quickly made, it should not be made without the benefit of counsel, and it should not be made under the stress of a critical incident. A decision to waive one's constitutional rights should be voluntary, knowing and made while the officer is in his or her proper frame of mind and not under trauma from the incident or otherwise.

If a decision is made to provide a voluntary statement to a criminal investigative agency, it is imperative that the officer and his or her counsel take all appropriate steps to safeguard and preserve the integrity of that evidence being offered. Just as when an officer investigates a case, when the officer is under investigation, similar steps should be undertaken to preserve the original evidence and its integrity. All statements given by the officer should be audio taped and/or videotaped.

Some criminal investigative authorities still do not utilize modern technology in criminal investigations. For example, the North Carolina State Bureau of Investigation does not utilize simple tape recordings when taking statements from witnesses. The process used involves an investigating agent verbally interviewing a witness or a suspect officer, whereby the agent will subsequently prepare a summary report of the interview which is then reduced to a word processed form. This very process involves editing and synthesizing. Cases have demonstrated how critically important facts and circumstances are edited out in that process. We do not contend that this is intentionally done, but it is nonetheless done.

Criminal investigative agencies will often attempt to immediately investigate an alleged law enforcement critical incident with a "team" of agents who are dispatched to completely canvas the area of the incident. Other alleged crimes are not treated in the same or similar fashion. Some criminal investigative agencies make an immediate effort to coerce the officer to provide a statement within hours after the alleged critical incident usually while the officer is under the extraordinary stress of a critical incident.

As the officer's employer and criminal investigative authorities commence an investigation of the officer, the officer should already have commenced an investigation into the underlying incident and if necessary into the conduct of the employer.

The officer should employ experienced specialized counsel who should conduct an immediate and thorough investigation. Some investigation must be conducted before the officer can make an intelligent decision about whether or not to waive his or her constitutional rights and make a voluntary statement.

The officer's conduct throughout the investigation is very important. The officer must understand his or her own unique role in that investigation and to always be truthful. At all times, the officer must remain professional and dignified so as to not allow the investigators to create additional evidence which can be used against the officer.

If an officer has committed misconduct that warrants termination, resignation should be strongly considered.

#### ***H. CHECKLIST OF ITEMS FOR ALLEGED INCIDENT EVALUATION***

These are a few ideas for officer counsel and advocates.

Investigate, investigate, investigate. Learn the facts before making strategy.

The forty eight hour aftermath: control, discover, investigate, prepare. What happened: Who, What, Where, When and Why?

Identify the charges: is it a rule violation or policy violation; is it possibly a criminal charge? Consider *Garrity v. New Jersey* issues. Analyze issues of cooperation with investigations.

Immediately begin the *archeological dig* for all facts, contentions and documents which may possibly relate to the dispute.

Immediately control the client/officer; try to prevent the client from doing or saying anything stupid while under stress.

Have the officer immediately obtain his/her complete personnel, internal affairs and all other available files; conduct a page count and send a verifying letter. Request all alleged evidence and all documents from the employer.

Immediately begin an objective investigation into the dispute by interviewing witnesses and obtaining all documents.

Where appropriate, video or audio record evidence such as interviews and incident scenes. Use the wire where appropriate, lawful and ethical. Capture and preserve the truth.

Immediately determine the employer's grievance/appeal policy/procedure; determine the statute of limitations regarding grievances/appeals.

Where appropriate, use the grievance process for discovery; failure to exhaust the grievance procedure may haunt you.

Develop a news media relations strategy; be careful with any self-publication, which may defeat or limit liberty interest and other claims. It is often best to avoid the media but sometimes you have to jump in to try to at least neutralize.

In termination cases, immediately file a claim for unemployment compensation benefits, which will likely lead to a hearing, discovery and further opportunity to evaluate.

Obtain any certification/licensing reports from agencies that may regulate the public employer/employee. Law enforcement agencies often must file a report with state agencies whereby terminations are addressed.

Where appropriate, immediately refer a client to a psychologist, medical or other professional.

Immediately investigate labor history of employer and responsible officials.

Determine severity of dispute; can a grievance or diplomatic advocacy fix it, or is heavy artillery necessary?

### ***I. ADMINISTRATIVE AND/OR INTERNAL REMEDIES***

Officers often have available various administrative remedies which they can at least pursue to obtain further information and administrative investigations. For example, if there is a recognized basis of a charge of discrimination, the officer can file a charge with the Equal Employment Opportunity Commission who will investigate. That information can in turn be subsequently obtained for the benefit of the overall inquiry.

Many law enforcement employers provide some type of grievance and/or appeal mechanism. While it is true that many of these are symbolic and result in futile efforts with rubber stamp conclusions, they may in any event aid the investigative process. In many instances, the employing agency will violate its own procedural and/or substantive rules. This can aid in shedding further light on the competence of the employer and/or motivations involved.

Generally, the officer should be very careful to not waive any recognized grievance or appellate process rights. The failure to exhaust the administrative mechanism will be used against the officer with an argument that the officer has not utilized available mechanisms for relief and the employer will set up an argument of "practical waiver."

A decision has to be made on a case by case basis as to whether or not a grievance is appropriate in a given set of circumstances. If a decision is made to initiate a grievance, it is imperative that the grievance be carefully prepared and well presented. It must be entirely factually accurate and should not contain unsubstantiated allegations or inflammatory matters.

The development and filing of grievances and appeals sets forth a substantial paper trail, which ultimately turns into exhibits to be used in the trial of a case and/or before a jury. Consequently, great care and caution should be taken in connection with the preparation of all such documents which become a part of the process and the official record.

In communicating with a law enforcement employer and/or outside authorities, an officer should always communicate in writing so as to have a documented record of what is occurring. Appropriate steps should be taken to ensure the receipt of such communications and the officers should retain the proof.

### ***J. THE USE OF INDEPENDENT COUNSEL***

One of the biggest mistakes that many officers make is thinking that "since I am innocent, I can handle this." Abraham Lincoln was known for saying: "He who is his own lawyer has a fool for a client." When one is an accused, he or she is usually the worst person to provide objective research and advice. Wise officers do not try to diagnose their own medical conditions and impose self-remedies. Officers similarly should not try to self-lawyer.

The bottom line is simple: Don't go it alone. Quickly find specialized legal counsel. Make sure that the lawyer is versed in law enforcement law, police personnel and related law.

Officers must have competent legal counsel available for assistance at all times. The officer must make sure that his or her counsel is free of conflicts of interest so that the officer's individual legal interests can be served.

The agency or governmental entity lawyer cannot advise the agency and the officer. The agency lawyer owes a duty to the agency, not the officer.

Before disclosing any facts to any prospective counsel for the officer, the officer must inquire and determine if the counsel has or is representing the agency, any other officials or employees of the agency, any other state officials or any other persons involved or witnesses in the dispute. Each officer involved in a dispute typically need separate counsel to avoid conflicts of interest.

If an officer has any question about the propriety of his or her own conduct, independent counsel should be immediately contacted. Counsel should also be contacted when legal questions arise even when there is no pending dispute. Good legal counsel can often assist in avoiding legal problems before they materialize.

Generally, there is no legal right to have counsel present during an internal affairs interview when providing a statement pursuant to *Garrity*. An officer may be able to seek an opportunity to confer with counsel, at least telephonically, prior to making any statement, however, there is no general legal entitlement affording officers the right to do so. If there is some incident where an officer anticipates being requested to submit to interview, he or she should consider contacting counsel in advance and discussing the matter prior to the interview.

Many officers wait until they are charged before seeking counsel, which is much too late. Specialized counsel can often devise strategies to avoid charges from being filed.

### ***K. HOW TO DETER AND AVOID CHARGES AND LAWSUITS THROUGH PROFESSIONALISM, PREPARATION AND BEING READY TO DEFEND***

It is extremely unlikely that you will serve in law enforcement and not be sued or accused of some violation of law or policy.

Officers are moving targets. The best defense is to be prepared to deal with adverse allegations in advance, so that when trouble strikes, a proper defense can immediately proceed. The following is a food for thought checklist of ideas:

- 1) Have multiple counsel already lined up; keep their phone numbers, pagers, and cell phone numbers ready at all times. Have their authority to call them anytime. Advise your family of this procedure in the event that you are seriously injured and cannot make the calls yourself. When you see a problem developing, seek legal advice as soon as possible, which may thwart the problem before it results in a charge against you.
- 2) Unless prohibited by law in your jurisdiction and/or by your agency or governmental policy, keep two functional tape recorders with fresh batteries with you at all times. Use the wire whenever you think something adverse is in the works.
- 3) Be truthful at all times. Be professional at all times. Show respect to everyone you deal with in communications and conduct, even when you are being mistreated.
- 4) Pursue continuing professional training and education. This will help bolster your qualifications which may come under attack in complaints against you.
- 5) Always assume that all conversations and activity are being videotaped and audiotaped; thus, officers should never say or do anything that will embarrass themselves later. Do not make foolish statements. Do not make jokes that would offend any person or group.
- 6) Work hard to do your best job. Keep all police equipment in proper working order; if it fails, immediately report it in writing through your chain of command.
- 7) Know all of your agency policies and procedures; keep an extra copy of the agency policy and procedure manual with you at all times. Comply with agency policy at all times. If agency policy appears wrong, consider a legal challenge to the policy.
- 8) Follow all lawful orders of superiors unless there is an emergency or other clear exigent circumstance which requires deviation. If you perceive that an order might be unlawful, confer with independent counsel immediately.
- 9) Follow your oath of office at all times and follow the code of ethics at all times.
- 10) Consider using the agency grievance procedure after consultation with counsel.
- 11) Document your course of action. Keep and maintain complete records. Stay organized. Stay cool.
- 12) If you become aware of suspected misconduct, report it pursuant to agency policy. If potentially criminal, report it to the District Attorney. Document your reporting efforts. Seek legal advice about how to report perceived misconduct.
- 13) Do not start a war unnecessarily when you are accused. Do not start making allegations and countercharges. Put together your legal team and have the matter investigated. Then develop strategy. Don't call them names. Develop your defense and your offense.
- 14) Be reasonable. You may not be perfect. You may have inadvertently committed some infraction. Let counsel try to work it out for you.
- 15) Do not jump to conclusions about personnel disputes or allegations against you. Your decisions should be made when calm and after having objectively analyzed the issues and after consultation with legal counsel.

16) Keep up with your personnel history by keeping excellent records of everything relating to your job, especially all evaluations. Keep clear copies of all documents in a safe secure place.

17) Unless ordered by your employer, do not talk to anyone about the incident except your lawyer or his/her agents.

18) Work to promote officers' rights. Shouldn't you have at least the same rights that North Carolina teachers have?

## **L. THINGS TO DO TO STAY OUT OF TROUBLE**

The following are fundamental rules for survival as a North Carolina law enforcement officer.

Always be prepared to defend your life physically. Always be prepared to defend your career legally. Seek the advice of counsel at the first hint of trouble.

Sooner or later, you will likely be the subject of a false or misleading complaint. Be knowledgeable and ready in advance to defend and defeat it.

Be fully prepared to defend yourself at all times by being ready to assemble a team of advocates to help if you are accused of criminal conduct or an alleged policy or other violation.

Plan in advance of who you will call in the event of a criminal investigation, a critical incident or significant allegation of misconduct.

Keep the contact phone numbers of well qualified police liability counsel with you at all times.

Do not throw away your constitutional, civil and other legal rights.

Have two family members designated for contact in the event of a critical incident or emergency.

Know your agency policy and procedure manual. Keep an extra copy of your personnel manual with you at all times, on and off duty.

Study your policy and procedure manual regularly.

Stay abreast of relevant developments in the law.

Do your best to comply with agency policy at all times unless a true emergency necessitates deviation.

Undertake additional training and keep complete records of your training.  
Keep your personal police equipment in proper functioning order.

Do not assume that a complaint will not be a "big deal." Take every complaint seriously. Prepare to defend and defeat it.

Report apparent misconduct immediately to the appropriate authority. Seek legal advice if it is not clear who is the appropriate authority.

Do not consume any alcohol the day before any shift. Do not risk having residual effects of alcohol in your body or on your breath.

When taking prescribed medication, make sure that you know the potential side effects.

Seek advice from your physician if you have any question about your own fitness for duty or any medical issue.

If you have any doubt about your fitness for duty, seek leave.

Follow all lawful orders of superiors unless there is a true emergency or other exigent circumstances which requires deviation.

Following an incident where you may become an accused, do not volunteer any statements. Await a proper order from a supervisor.

Wherever possible, thoroughly prepare for all internal affairs interviews. Refresh your recollection with any written statement.

When preparing written statements, always prepare a draft and analyze it before preparing the final statement. Seek the advice of counsel if you have questions.

Make sure that all verbal and written statements that you provide are complete, accurate and true.

Be truthful at all times.

Be prepared to tape record any statement that warrants recording if it is permitted by law and policy in your agency.

If contacted by a criminal investigator about your conduct, inquire generally about the nature of the inquiry. If you are in any way a possible suspect or person of interest, seek immediate legal advice before making any statement. Do not get pressured or tricked into an immediate waiver of rights.

State Bureau of Investigation and other criminal investigations into officer involved shootings, other use of force and other officer conduct often begin within minutes of the incident. Be ready to immediately obtain counsel and defend your interests prior to making statements to criminal investigations.

A federal criminal investigation may soon follow the state investigation. Be ready.

Make sure that you invoke your *Garrity* rights by asserting those rights before you make a statement to your employer following your employer's order or request that you provide a statement.

Insert a protective *Garrity* invocation on each use of force report.  
Safeguard and invoke your constitutional and civil rights to protect your interests.

Seek legal advice at the earliest possible opportunity upon notice of any impending dispute with legal implications.

Never attempt to self lawyer or self-medicate. Find and use an experienced specialist for your legal and medical needs.

After any complaint or critical incident, document your position and course of action.

Stay away from the news media, and do not speak to them upon inquiry.

Show complete respect for all supervisors and all other co-employees.

Always be professional, even when being mistreated.

Avoid risk by avoiding significant associations with persons who have engaged in criminal activity.

Do not hesitate to seek professional counseling to help with emotional, marital, financial or other problems.

Do not allow personal, family or other problems to adversely affect your performance or conduct. Seek help early.

Protect the integrity and accuracy of your personnel file by checking it periodically.

Keep copies of all documents that relate to your employment. Keep all personnel and other evaluations.

Keep a file on all of your personnel, certification, medical and medication records.

Maintain compliance with all regulations of the N.C. Criminal Justice Education & Training Standards Commission. Protect your law enforcement certification.

Appropriately challenge any document that mischaracterizes your performance or conduct.

Develop a positive professional relationship with all judges and show complete respect to all judges at all times, in and out of the courtroom.

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

Develop and maintain a positive relationship with your State Senator and State Representative.

Work hard; be productive; be reasonable.

Do not use your employer's equipment or property for personal use.

Never use your agency email for personal communications.

Never engage in any political activities while on the job.

Be careful of your off duty associations. Others can get you into serious trouble.

Stay out of strip bars.

Do not abuse alcohol.

Do not engage in illicit relationships.

Be respectful and professional with all supervisors and colleagues.

Do not knuckle under to intimidation or implied blackmail.

Do not allow co-workers to influence your objective decisionmaking in a personnel dispute. Officer colleagues are not advisors.

If an internal affairs investigation starts, you cannot and must not contact witnesses. Your counsel must guide that process.

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

Use your agency grievance policy when appropriate after consultation with counsel. Develop grievances carefully and precisely.

Do not make remarks that may constitute harassment or intimidation. Do not tell jokes that may offend anyone.

Initiate recommendations for improvement of your agency.

Work to strengthen organized law enforcement officer associational activity.

Never allow anyone to interfere with your right to legal counsel. However, current law does not allow law enforcement officers to have legal counsel present during internal affairs interviews. You are free to seek counsel before such internal affairs interviews. Seek counsel immediately at the first hint of possible trouble.

Work to promote labor and civil rights legislation to help law enforcement officers have basic rights to workplace fairness.

Work to promote the legal rights of law enforcement officers.

Become more politically active to help advocate for more rights and benefits for law enforcement officers.

When in doubt about anything connected with your job, seek legal advice as soon as possible.

Protect yourself. Keep your guard up. Do not be intimidated.

### ***M. GARRITY V. NEW JERSEY AND THE HISTORIC RIGHT AGAINST SELF-INCRIMINATION***

The seminal case addressing the protocol when an officer is under an administrative or internal non-criminal investigation is *Garrity v. New Jersey*, 385 U.S. 493 (1967).

The *Garrity* case essentially explains that an officer may not be forced to provide a statement and then use that statement against the officer in a criminal proceeding. The *Garrity* doctrine is unquestionably among the most important principles in law enforcement personnel administration. *Garrity* is a case that is ignored in law schools, in continuing legal education and even in specific law enforcement training courses. The basic rules arising from *Garrity* and its progeny are fairly straightforward but sometimes confusing in application.

1) An officer can be ordered to cooperate in an internal administrative investigation to provide statements regarding matters that are specifically, directly and narrowly related to the officer's official conduct.

2) Statements made pursuant to an order to cooperate in an internal administrative investigation cannot be used against the officer in any criminal proceeding. The "criminal proceeding" is likely going to be the trial. Some cases allow grand jury use of Garrity statements.

3) An officer may not refuse to answer specific, direct and narrow job related questions as long as the agency does not seek to compel a waiver of constitutional rights.

4) An officer can be substantially disciplined or fired for refusing to cooperate and provide statements in an internal administrative investigation after a *Garrity* warning.

The *Garrity* protections apply whenever an employee is required by the employing agency to answer questions in an investigation. *Gilbert v. Nix*, 990 F.2d 1044 (8th Cir. 1993). Under *Garrity*, the employer should provide an affirmative guarantee that the information sought will not be used against the officer in a criminal proceeding and warn the employee that the failure to respond to questioning could lead to disciplinary action. If the employer does not explain these matters, or if there is any confusion, it is generally better for the officer to attempt to Garrityize himself or herself.

In order for *Garrity* to apply, the statement must be compelled and not voluntary. *U.S. v. Najariano*, 915 F. Supp. 1460 (D. Minn. 1996). A voluntary statement by an officer is not protected by *Garrity* and that statement may be used against the officer in any proceeding, administrative, internal, personnel, civil or criminal.

For *Garrity* to apply, the officer must believe that his statements are being compelled under threat of substantial discipline.

When correctly applied, the *Garrity* procedure has well served law enforcement agencies and officers in delineating the scope of duties and responsibilities during administrative investigations. The unwillingness of some law enforcement administrators to adhere to it causes tremendous frustration in a process designed to elicit the truth.

Officers must be trained to protect themselves by incorporating a protective *Garrity* assertion before giving any statements in connection with an investigation into his or her conduct. Officers should "Garrityize" themselves if there is any doubt. This can be done by using the following form. Each officer should keep a copy of the protective statement with them at all times. Some associations have a wallet of available materials that contains a "Garrity" card. By inserting the protective statement, the officer can clarify any issues in agencies that do not use a written *Garrity* rights form.

### ***1. GARRITY RIGHTS FORM FOR OFFICERS***

The following is a statement that officers may use in preparing a statement or issuing a report in response to a request from their employing agency. This enables officers to "Garrityize" themselves. This should be placed at the beginning on a "use of force" or critical incident report if such a report is required by the employer.

"On \_\_\_\_\_ (date) at \_\_\_\_\_ (time), at \_\_\_\_\_ (place) I was ordered to submit this report (or give this statement) by \_\_\_\_\_ (name and rank). Consequently, I provide this report (or statement) involuntarily and only because of that order as a condition of continued employment. In view of likely job forfeiture or termination of employment if I refuse to cooperate and provide this statement, I have no alternative but to abide by this order and I am submitting this statement (report) involuntarily.

It is my belief and understanding that the department requires this report (statement) solely and exclusively for internal purposes and will not release it to any other agency or authority. It is my further belief and understanding that this report (statement) will not be released to or provided to any subsequent proceeding other than disciplinary proceedings within my employing department itself.

For any and all purposes, I hereby specifically reserve my constitutional rights to remain silent under the Fifth and Fourteenth Amendments to the United States Constitution, under the State Constitution, and under all other rights provided by law. Further, I rely specifically upon the protection afforded to me under the doctrines set forth in *Garrity v. State of New Jersey*, 385 U.S. 493 (1967), *Spevack v. Klein*, 385 U.S. 511 (1967), *Gardener v. Broderick* 392 U.S. 273 (1968), and other cases, should this report (statement) be used for any other purpose of any kind or description.

I respectfully request an opportunity to confer with legal counsel so that my rights may be protected prior to providing a statement.

I have respectfully requested that my employer identify the purposes of the investigation that has given rise to my requested statement. I have been advised that this investigation is an internal administrative matter, and that it is not a criminal investigation.

---

Officer

### **Reminder For Officers**

As a condition of employment, you are required to abide by the employer's lawful rules and regulations. You must answer questions, give statements, and submit reports at the order of an investigating officer or become subject to disciplinary action for refusal to obey. You may be disciplined for providing false information or for lying to your agency.

It is suggested that you include the procedure outlined above when making statements or submitting reports concerning complaints from citizens, or when you are suspected of a violation of the law or of the agency's rules and regulations. By doing so, you will enhance the likelihood that your statements and reports cannot be used as evidence against you in any criminal proceeding. State criminal charges against officers are increasing.

### ***N. OFFICER CONDUCT ISSUES***

Officers are subject to and must therefore understand the multiple sources of law that they can be charged with. These laws are constitutional, statutory, common law, state regulations, the law enforcement agency rules, and other rules of the governing employer.

Officers may be sued in both their official and individual capacities for any alleged violation of any law. An individual capacity claim seeks to obtain the officer's personal assets.

#### ***1. STATE CRIMINAL LAW***

Officers can be and are charged with various types of state criminal offenses. These include but are not limited to murder, manslaughter, felony assaults, misdemeanor assaults and batteries, obtaining property by false pretenses, witness intimidation, perjury, obstruction of justice, abuse of office, malfeasance in office, obstruct and delay and others.

If an officer carries out his or her duty to use deadly force, the officer will be put through a living hell. Regardless of how appropriate the officer's conduct was, there will be inherent punishment. Investigations will start flying, first state, perhaps federal next. Media accusations may be flying. The family of the deceased will start screaming. Political pressure may be applied.

N.C.G.S. 14-230 is being used as a basis to criminally charge and decertify officers. This offense is committed when an officer fails to properly discharge the duties of their office. This statute is very broad and can be used to hook the most innocent conduct.

## **2. FEDERAL CRIMINAL LAW**

Despite the fact that courts have generally recognized that law enforcement officers are vulnerable to unfounded claims of abuse, state and federal prosecutors pound away at law enforcement officers despite the substantial drop in deadly force.

The United States Department of Justice has a special unit within its Civil Rights Division that prosecutes law enforcement officers charged with federal criminal civil rights violations. The Civil Rights Division has a 71% success rate in prosecuting law enforcement officers charged with federal criminal civil rights violations. See Levenson, *The Future of State and Federal Civil Rights Prosecutions*, 41 U.C.L.A. L. Rev. 509, 541 (1994).

In addition to the panoply of legal claims that can be asserted against law enforcement officers under state civil and criminal law, and under federal civil law, there are two additional federal criminal statutes which have become a prevalent threat to the law enforcement profession.

Both 18 U.S.C. 241 and 242 afford additional sources of charges that may be lodged against law enforcement officers for the run of the mill excessive force allegation. There are a number of federal criminal cases against officers which arise from kicking incidents.

These statutes provide for an additional basis to criminally indict an officer who is alleged to have used excessive force. 18 U.S.C. 241, generally prohibits conspiracies to violate civil rights and 18 U.S.C. 242, generally prohibits excessive force and other conduct that deprives one of a federal constitutional or statutory right.

Title 18 U.S.C. 242 is generally entitled "Deprivation of Rights Under Color of Law." This statute generally prohibits any willful deprivation of any rights protected by the Constitution or federal laws. This statute is generally recognized to criminalize a federal violation of civil rights. The statute applies to any person who acts "under color of any law, statute, ordinance, regulation or custom...".

18 U.S.C. 242 "imposes a criminal penalty on anyone who, under color of state law, willfully subjects any person to the deprivation of rights secured by the constitutional laws of the United States." *United States v. Colbert*, 172 F.3d 594, 596 (8th Cir. 1999).

Perhaps the most common application of 18 U.S.C. 242 appears in the traditional alleged excessive force case. In *United States v. Clayton*, 172 F.3d 347 (5th Cir. 1999), the Court affirmed the conviction of a deputy sheriff for alleged excessive force predicated upon a deprivation of civil rights protected by 18 U.S.C. 242 and for making a false statement of material fact to the Federal Bureau of Investigation in violation of 18 U.S.C. 1001. The deputy was alleged to have kicked someone in the head, which constituted the alleged excessive force constituting a crime. The deputy was also convicted of making a false statement of material fact to the FBI when the deputy denied the use of unreasonable force during the instant of arrest.

*Clayton* demonstrates how garden-variety excessive force allegations may translate into federal crimes. *Clayton* also demonstrates how statements to the Federal Bureau of Investigation are inherently risky because if there is an alleged false statement, that allegation may become the basis of an alleged federal crime under 18 U.S.C. 1001.

In *United States v. Livoti*, 196 F.3d 322 (2nd Cir. 1999), the Second Circuit Court of Appeals affirmed an officer's conviction under 18 U.S.C. 242 where the officer allegedly engaged in a choke hold on a criminal suspect. As in *Clayton*, *Livoti* further demonstrates how basic excessive force allegations can translate into a federal criminal indictment, conviction and imprisonment.

In *United States v. Myers*, 972 F.2d 1566, 1571 (11th Cir. 1992), the Court affirmed an officer's conviction for violating 18 U.S.C. 242 where the officer used a stun gun on a criminal suspect which was held to constitute excessive force under the circumstances. In *Myers*, the Eleventh Circuit analyzed and applied the traditional civil excessive force standard from *Graham v. Connor*, 490 U.S. 386 (1989).

In *United States v. Bradley*, 196 F.3d 762, 769 (2nd Cir. 1999), the Second Circuit Court of Appeals affirmed an officer's conviction arising out of a gunshot that was fired into a vehicle which was being pursued by the officer. The Court in *Bradley* further held that the willfulness requirement under 18 U.S.C. 242, may "be reasonably inferred from all the circumstances attendant on the act." This loose circumstantial evidence standard makes it quite easy to infer "willfulness" to satisfy the government's burden of proof.

The ill defined and loose elements of 18 U.S.C. 242, present grave risks of federal criminal prosecution for law enforcement officers. Because of the Supreme Court's recognition of the "dual sovereignty doctrine", law enforcement officers are subject to criminal prosecution in state court, and later or before, in federal court for the same alleged offenses.

One can only imagine the trauma of a federal criminal prosecution for the use of alleged excessive force. Such a prosecution may follow the officer's complete acquittal of alleged excessive force under state law, as well as complete exoneration in traditional civil excessive force litigation.

## ***O. USE OF FORCE LAW***

Law enforcement use of force is among the most controversial public interest topics throughout the country. The Supreme Court has observed that there is often a "hazy border between excessive and acceptable force." *Saucier v. Katz*, 121 S.Ct. 2151, 2158 (2001). Many of the headline grabbing cases invoke strong emotion, often pitting interest groups against officers.

Law enforcement use of force claims may be asserted under both state and federal law. Use of force claims may be predicated upon constitutional, statutory or common law. The most common theory is a constitutional tort claim under the Fourth Amendment via 42 U.S.C. 1983. The most common form of alleged police misconduct is excessive force. Use of force claims may be predicated upon constitutional, statutory or common law. The central issue in most use of force cases is typically *whether an objectively reasonable officer could have reasonably believed that the force employed was appropriate under the circumstances*. Similar legal standards apply to most charges against police officers: the *objective reasonableness standard*. See McGuinness, *Shootings By Police Officers Are Analyzed Under Standards Based On Objective Reasonableness*, 72 N.Y. Bar J. 17 (2000); McGuinness, *A Primer On North Carolina And Federal Use Of Force Law: Trends In Fourth Amendment Doctrine, Qualified Immunity, And State Law Issues*, 31 Campbell L. Rev. 431 (2009).

## **1. THREE MODES OF USE OF FORCE LAW AND DEFENSES**

Use of force law involves a large of body of law including state and federal statutory, constitutional and common law:

### 1) State statutory or common law use of force claims:

Statutory wrongful death

Common law negligence

Other torts such as assault, battery and intentional infliction of emotional distress

### 2) Federal constitutional claims:

Fourth Amendment (Traditional use of force claims)

Eighth Amendment (Jail cases)

Fourteenth Amendment (vehicle pursuit cases; employs the "shocks the conscience" substantive due process test.)

### 3) State constitutional claims

Departmental use of force policy is not legally enforceable as a claim in civil actions. While departmental policies are appropriate for general guidelines and training, the enforceable law derives from constitutional, statutory and common law sources.

There are many available defenses, which also arise from statutory and common law sources. Some, but not all, of those include:

a) Self defense

b) Defense of others

c) Necessity

d) Justification

e) State law statutory defenses (For example, N.C.G.S. 15A-401(d) provides a statutory defense where the officer could have reasonably believed that the level of force used was appropriate)

f) The force used was not unlawfully excessive

g) The officer reasonably could have believed that the force used was appropriate

h) Law enforcement privilege

i) Crime prevention privilege

j) Authority and duty of law

k) Assumption of risk

- l) Provocation
- m) Doctrine of mistaken beliefs
- n) Contributory negligence
- o) Lack of causation (complained of incident did not cause the damages)
- p) Qualified immunity (immunizes officers from individual liability under various circumstances)
- q) Public officer immunity (immunizes officers from state law individual liability under various circumstances)

The following are a few general use of force principles:

- 1) Officer perception in light of the particular circumstances is often the key factor for analysis in most use of force cases.
- 2) The force used is judged from the perspective of a reasonable officer on the particular scene confronting those circumstances, rather than with 20/20 hindsight.
- 3) Courts use a split second decisionmaking context where applicable; this standard is extremely deferential to officer discretion.
- 4) Reasonable mistakes based upon good faith mistaken beliefs typically insulate officers from liability. In *Saucier*, the Supreme Court also reaffirmed the *doctrine of mistaken beliefs in law enforcement*, which provides:
 

“[i]f an officer reasonably, but mistakenly, believed that the suspect was likely to fight back, for instance, the officer would be justified in using more force than in fact was needed.”
- 5) Analysis of the use of force is keyed to the facts at the precise moment of the force used. Ten minutes of rational conduct by a suspect, followed by an instantaneous threatening movement typically justifies the force.
- 6) The use of force continuum is helpful for analysis but is not the law: verbal persuasion, verbal commands, verbal warnings; then lesser alternatives (where feasible) to deadly force by firearm such as baton, pepper spray or canine. The continuum evolves from a show of force to the use of force. As the risk progressively gets more severe as the magnitude and intensity of the threat to officers increases, officers shall resort to more efficient weapons to stop the threat and control the suspect.
- 7) Although the degree of force should theoretically be commensurate with the magnitude of the apparent threat, however, use of force law does not allow admission of evidence that the officer had less drastic means; the test is whether what the officer did was objectively reasonable.
- 8) The display of potentially deadly weapons, such as but not limited to edged weapons, heavy objects, or broken bottles, etc; usually justifies deadly force. Display of a gun almost always justifies deadly force. A real weapon need not be present; an officer is required to act to protect himself/herself and third persons from apparent threats and apparent weapons.

9) Bullet trajectory and the number of shots fired does not determine the issue of justification, which is often the essential factual point. Back and side shot cases are often completely justifiable because of the lag time phenomenon.

10) Justification is the key point for analysis in most use of force cases. Justification involves a comprehensive analysis of both facts, perceptions by the officer and law.

The determination of whether force used is unreasonable and excessive under the Fourth Amendment involves application of a balancing test and is applied whereby the court considers the nature and quality of the intrusion on the suspect's Fourth Amendment interests which is balanced against the countervailing governmental interests. Many cases reflect the balancing of relevant factors.

In *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court defined the constitutional standard governing claims for excessive force during an arrest, investigatory stop, or other seizure. The Court held that in judging the reasonableness of force under the Fourth Amendment, the following factors must be considered:

- (1) the severity of the crime;
- (2) whether the suspect posed an immediate threat to the officers or others;
- (3) whether the suspect was actively resisting arrest; and
- (4) whether the suspect is attempting to evade arrest by flight.

## **2. POLICE PURSUITS AND THE USE OF FORCE**

In *Scott v. Harris*, 550 U.S. 372, 127 S.Ct. 1769 (2007), the Supreme Court addressed a use of force case in the context of a vehicular chase. *Scott* represents a logical extension of the Court's developing body of use of force law. The *Graham v. Connor* objective reasonableness standard was reaffirmed and applied in the context of a traditional police pursuit.

The Court in *Scott* framed the narrow issues as follows: whether a law enforcement officer may attempt to stop a fleeing motorist from continuing a public-endangering flight by ramming a motorist's car from behind. Alternatively stated, whether an officer may take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders.

In *Scott*, a Georgia deputy clocked the plaintiff's vehicle traveling at 73 miles per hour in a 55 miles per hour zone. The deputy activated his blue lights in connection with an attempted stop of the vehicle. However, plaintiff fled which began a chase down a mostly two lane road at speeds exceeding 85 miles per hour. The deputy radioed to his dispatcher advising of his pursuit and broadcast the license plate number of the subject vehicle. Defendant Deputy Timothy Scott heard the radio communication and joined the pursuit along with other officers. In the midst of the chase, plaintiff pulled into a parking lot of a shopping center and was nearly boxed in by various police vehicles. However, plaintiff evaded the trap by making a sharp turn, colliding with Deputy Scott's police car and then exiting the parking lot and speeding off again down a two lane highway. Following the plaintiff's shopping center maneuvering, which resulted in slight damage to Deputy Scott's police car, Deputy Scott took over as the lead pursuit vehicle.

Six minutes later and nearly ten miles after the chase began, Deputy Scott decided to attempt to terminate the episode by employing a “precision intervention technique (PIT) maneuver, which causes the fleeing vehicle to spin to a stop.” Deputy Scott radioed his supervisor for permission and Deputy Scott was told to proceed. Scott applied his push bumper to the rear of plaintiff’s vehicle. Instead of employing the PIT maneuver, Scott determined that the vehicles were moving too quickly to safely execute the PIT maneuver. As result of applying his push bumper to the rear of plaintiff’s vehicle, plaintiff lost control of the vehicle, which left the roadway, ran down an embankment and crashed. Plaintiff was rendered a quadriplegic. The chase was captured on the police car videotape and the Supreme Court included the videotape on its website for viewing.

The Supreme Court reaffirmed the use of the objective reasonableness balancing test. In determining the reasonableness of a seizure, courts must balance the nature and quality of the intrusion on the individual’s Fourth Amendment interest against the importance of the governmental interest alleged to justify the intrusion. The Supreme Court observed that Deputy Scott successfully defended his actions by asserting the “paramount governmental interest in ensuring public safety...” The Supreme Court observed that “we must consider the risk of bodily harm that Scott’s actions posed to respondent in light of the threat to the public that Scott was trying to eliminate.”

The Supreme Court weighed and balanced the risk of harm to bystanders as compared with the assumed risk of harm by the fleeing plaintiff. The Court explained that it was the Plaintiff “who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produced the choice between two evils that Scott confronted.” The Supreme Court concluded that “we have little difficulty in concluding that it was reasonable for Scott to take the action that he did.”

The Court observed that the plaintiff argued that the innocent public equally could have been protected and the accident entirely avoided if police had ceased their pursuit. The Court explained that “we think the police need not have taken that chance and hoped for the best.” The Court further reasoned that “we are loath to lay down a rule requiring the police to allow a fleeing suspect to get away whenever they drive so recklessly that they put other people’s lives in danger. It is obvious that the perverse incentives such a rule would create...” The Court explained:

“The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness. Instead, we lay down a more sensible rule: a police officer’s attempt to terminate a dangerous high speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.”

In *Scott*, the Court recognized and respected the grave risk of harm presented to officers, bystanders and other innocent motorists on the highway. The fleeing plaintiff’s conduct necessarily assumed a risk of harm to himself. Those factors and the traditional balancing inquiry appear to have made the decision an easy one for the Court which resulted in an 8-1 decision with a sole dissent by Justice Stevens.

Lower courts have begun to apply the rule and reasoning of *Scott*. In *Abney v. Coe*, 493 F.3d 412 (4<sup>th</sup> Cir. 2007), the Fourth Circuit addressed a case involving an alleged wrongful death and Section 1983 action arising out of a collision between a motorcyclist and deputy sheriff’s car following an eight mile pursuit. The motorcyclist refused to stop for a deputy sheriff’s flashing blue lights and siren over the course of an eight mile pursuit. The pursuit ended when the deputy’s car and motorcycle collided thereby killing the motorist. The plaintiff alleged that the deputy used

excessive force in violation of the Fourth Amendment through an alleged intentional ramming the rear of the motorcycle.

Plaintiff argued that Deputy Coe's actions were unreasonable and unconstitutional because plaintiff did not pose any risk to the public that justified using force that placed him at risk of serious injury or death. Plaintiff argued that a high speed chase of a suspect fleeing after a traffic infraction does not amount to the substantial threat of imminent physical harm required before deadly force can be used. The Fourth Circuit rejected Plaintiff's positions and found the Deputy's conduct reasonable.

The Fourth Circuit explained that "reasonableness is evaluated from the perspective of the officer on the scene, not through the more leisurely lens of hindsight." The Fourth Circuit explained that when public safety is the interest supporting a seizure, that courts consider the risk of bodily harm that the officer's actions posed to the suspect in light of the threat to the public that the officer was trying to eliminate. The Fourth Circuit concluded that there was a danger to the life of others during the eight mile pursuit and it was therefore "imminently reasonable to terminate the chase in order to avoid further risks to the lives of innocent motorists." The Fourth Circuit held that the deputy's attempt to terminate the car chase which threatened the lives of innocent bystanders did violate the Fourth Amendment even though it placed the fleeing motorist at risk of serious injury or death. Because the Fourth Circuit found the deputy's conduct to be reasonable, therefore it was unnecessary as to address qualified immunity.

Addressing other issues, the Fourth Circuit reaffirmed that the fact that the Department's policy forbidding precision intervention techniques does not determine whether such tactics are constitutional. The Fourth Circuit observed that it is settled law that a violation of departmental policy does not equate with constitutional unreasonableness. Therefore, the fact that deputies in that county were discouraged from using intervention techniques was determined to be irrelevant to the question whether the deputy's conduct was consistent with the Fourth Amendment.

The Fourth Circuit further explained that the subjective beliefs as to the reasonableness of an intervention technique are equally irrelevant to the constitutional inquiry. The Court concluded that an officer's subjective belief that a particular use of force was unreasonable is not proof of any constitutional violation. The Fourth Circuit therefore reversed and granted summary judgment as a matter of law for the deputy because his conduct was reasonable under the Fourth Amendment.

In *Long v. Slaton*, 508 F.3d 576 (11<sup>th</sup> Cir. 2007), the Court illustrates the point that whether a suspect is likely to engage in a dangerous vehicular flight is highly relevant to the question of whether deadly force is reasonable. In *Long*, the court held that an officer was justified in shooting a suspect who was attempting to steal a police vehicle, primarily because the suspect's irrational behavior strongly suggested that he would continue to flee and was likely to cause a dangerous chase.

The Court held that the officer's decision to shoot the suspect was objectively reasonable even though the suspect had put the vehicle in reverse and was backing away from the officer at the time the officer fired the fatal shot.

### 3. NORTH CAROLINA USE OF FORCE LAW

In North Carolina, we have a state statutory use of force standard, codified at N.C.G.S. 15A-401(d). It provides a “could have reasonably believed standard.”

"a law enforcement officer is justified in using deadly physical force upon another person ... when it is or **appears** to be **reasonably necessary** thereby: a. **to defend himself or a third person** from what he **reasonably believes to be the use or imminent use of deadly physical force**; b. to affect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay..." (emphasis added).

Many other leading cases are in accord. See *Turner v. City of Greenville*, 677 S.E. 2d 480 (N.C. App. 2009).

"An officer of the law has the right to use such force as he may reasonably believe necessary in the proper discharge of his duties to effect an arrest. G.S. 15A-401(d)(1) ... **the officer is properly left with the discretion to determine the amount of force required under the circumstances as they appear to him** at the time of the arrest." *State v. Anderson*, 40 N.C. App. 318, 321 (1979)(emphasis added).

In *Smith v. Freland*, 954 F.2d 343, 347 (6th Cir. 1992), the Court explained:

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

In *McLenagan v. Karnes*, 27 F.3d 1002, 1007 (4th Cir. 1994), the Fourth Circuit addressed many important issues. The Court explained:

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

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

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

#### 4. *GRAHAM v. CONNOR PROVIDES THE SPECIFIC EXCESSIVE FORCE TEST*

In *Graham v. Connor*, 490 U.S. 386, 395 (1989), the Supreme Court delineated the parameters of use of force principles in the law enforcement context. In *Graham*, the Court explained that:

the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. 490 U.S. at 396.

The calculus of reasonableness must embody allowance for:

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

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

In *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985), the Supreme Court explained that:

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

In *Hinton v. Raleigh*, 46 N.C. App. 305, 308 (1980), the Court held that the officer was entitled to shoot the alleged victim when the alleged victim failed to submit when ordered to do so by the officers. The officers were afforded the right of self-defense as provided for in the statute. The decedent was under a "duty" to "submit when ordered to do so by the officers." *Id.* at 308. The officer had a "right to self defense" as per N.C.G.S. 15A-401(d)(2). The decedent's "crouching" and movement "raising his arm" justified the officers to shoot.

In *State v. Burton*, 108 N.C. App. 219, 226 (1992), the Court held that if an officer is attempting a lawful arrest, the officer has the right to employ commensurate force to subdue the arrestee and the arrestee has no right to resist. The amount of force that an officer may utilize is that which appears "necessary from the viewpoint of the officer. G.S. 15A-401(d)(2)". *State v. Mensch*, 34 N.C. App. 572, 574 (1977).

## *P. CONCLUSION*

In the final analysis, we must send the message that the law enforcement profession is not content being second class anymore. Then, go forward and back up that message - in town halls, in the Congress, in the State General Assembly, in the courts, and beyond.

Remember the words of Senator Barry Goldwater.

"Extremism in the defense of liberty is no vice; moderation in the pursuit of justice is no virtue." Senator Barry Goldwater, Republican National Convention, 1964.

There is but one solution to this longstanding problem: we must work harder and smarter than ever to get rid of officials who have harmed the law enforcement profession by action or inaction. The degree of labor and civil rights protections for officers is largely dependent upon the political process at the state and federal levels. We will get what we earn by fighting for rights.

Unless law enforcement officers substantially organize politically to support truly pro-police candidates on labor and civil rights issues, the law enforcement profession will never be treated with respect.