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Representing Las Vegas Metro Police Department Officers and Deputy City and Municipal Court Marshals

VOLUME 4 | ISSUE 6

March/April 2010



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**Not on the  
LVPPA's Watch!**

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**"BIG 50"** – An informal association of the 50 largest law enforcement associations in the United States.

**SNCOPS** – Southern Nevada Conference of Police and Sheriffs



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# Executive Director's Message

**DETECTIVE CHRIS COLLINS, EXECUTIVE DIRECTOR**

## Is the Glass Half Empty or Half Full?

The question "Is the glass half empty or half full?" is one that can apply to almost any situation. It applies perfectly to what we are facing now — challenges with the economy, our upcoming contract negotiations (which will be underway, if not completed, by the time this is printed) and our Department overall.

## The Economy

Let's start with the economy. I don't think any of us ever imagined that during our careers here at Metro we would see a time when the Sheriff was forced to cut the budget of this agency. Why would we? In the past, we have seen the local economy boom; we had been the fastest-growing city, county and state in the country for many years. Everywhere you looked, this area was thriving and growing. The city's, the county's and the state's coffers were full of money. You may even remember not all that long ago when the state had so much money that we all got a refund check for every car we had registered. I sure bet the state would like to have that surplus money now.

Our state now faces nearly a ONE BILLION dollar shortfall for this year alone, and that number is expected to grow to over TWO BILLION in the next couple

years. To help fill this revenue shortfall, the Nevada State Legislature has taken money out of the coffers of the city of Las Vegas and Clark County. This is where the state's shortfall impacts all of us. The money taken by the state would have been money that we could have tried to negotiate into raises and benefits for our members. It is time for all of us to contact our state senators and assembly people and let them know our dissatisfaction with what has gone on. We need a broader tax base, as gaming revenues alone are no longer sufficient to meet the needs of state government. We need a business tax. The Las Vegas Chamber of Commerce would have you believe that if a business tax is imposed, industry will not come to our state. I have lived here my entire life and, unless I missed it, I have not noticed new industry rushing into our state ever! I have to believe that the Chamber's plan has failed and that they are only worried about themselves.

## Our Upcoming Contract Negotiations

Moving on to contract negotiations, let me start by saying that I hope that by the time you read this, negotiations are over. As I hope you all know, those of us here at the PPA are doing everything in our power to protect your

(continued on page 16)



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# The Butcher, the Baker, the Candlestick Maker — We Are Not

**POLICE OFFICER MARK CHAPARIAN**  
Assistant Executive Director

The men and women who have earned the title of “police officer” and “corrections officer” are hardworking, dedicated professionals who are consistently held to a higher standard than most in our community and are constantly reminded of this through Internal Affairs investigations, criminal and civil actions and our I.C.A.R.E. values. The demand for us to be better than others is one that we all accept and embrace. Logic would dictate that this is a two-way street. Everybody expects us to be held at a higher standard, and yet when it comes time for the city, county and Metro management to step up and hold the line with our jobs and benefits, they continue to lump us in a generic pool of people equal to the “butcher, baker and candlestick maker.” If our classifications are held to a higher standard, then so should our security in employment and benefits. The bitter reality is that without our dedicated professional officers doing what we all do best, society cannot function as we know it. We are simply the oil in the engine to allow others in our world the freedom to exist, prosper and live without fear.

The job of our city, county and Department administrators is to find the resources to ensure we are secure in our careers and benefits so we can concentrate on what we do best. The Sheriff has spent much time and effort to employ more police officers with our agency due to public safety. The voters have spoken and are paying more tax money to ensure Metro gets and retains more cops. The LVPPA, city of Las Vegas, Clark County and LVMPD have all agreed what the classification of police officer and corrections officer are worth. We continue to flawlessly do our jobs and are held accountable for our actions at every turn. Are we worth less today than we were yesterday? Are the citizens asking for a reduced number of officers to be employed? The answer is a resounding NO! We are NOT worth less than we were yesterday and the citizens are NOT asking for a reduced number of officers. In fact, public safety is always a top concern of the citizens of Las Vegas and Clark County. Make no mistake — the voting public is behind us 100%!

Most of you have heard rumor after rumor of requested and expected concessions, as well as a potential reduction in force (RIF). Many of you have called, e-mailed and met with myself and others working with the LVPPA to express your concerns. Please understand one thing that cannot be any clearer in the minds, hearts and souls of the entire LVPPA Board: YOUR EMPLOYMENT, SALARY AND BENEFITS ARE VERY IMPORTANT TO ALL OF US. We are doing everything in our power to ensure the integrity of each and every one of your positions and benefits that come with that. I caution all of you to be aware of the “snake-oil salesmen” that will promise you one thing if you will concede on another. Concessions do NOT equal a promise of no RIF. RIF does NOT mean the city, county and Metro won't be asking for concessions. The solution is really pretty simple. The LVPPA has recognized the predicament the economy has our community in and has not sought to increase our benefits. We have done our part. The city, county and Metro must now step up and find resources for our people and agency. Other non-public-safety entities are going to have to possibly reduce their spending and budgets. The “butcher, baker and candlestick maker” will have to tighten their belts a little more. Our own Department needs to reevaluate what they seem to refuse to acknowledge as wasted money. Single-officer patrol cars, take-home cars for bureau commanders (with no emergency response requirement), several duplication of services and executive retreats are just a few of the things

that they can start with. The Department’s own study has shown that using two-officer patrol cars could save millions of dollars every year just in fuel!

In closing, I would like you ALL to remember a few things as these contentious times are upon us. Concessions of any kind permanently degrade the classification and are not restored when economic times are better. Each and every concession you may vote to give away will have to be fought and negotiated for all over again. Any threats of RIF could be just that — a threat. Ask yourself this: Do you really think we can or should be operating with FEWER officers than we are now? If you were a regular citizen, what would YOUR thoughts be on reducing the level of officers who patrol your neighborhood, your workplace and your child’s school? In the event that we are forced to go to arbitration, do you really think we would lose when we are asking for a zero increase to anything? To me, the writing is clearly on the wall. Stay the course and stay united. It’s important for you all to know that, regardless of the direction we may be headed in, YOU, the member, are going to be asked to make the decision of where we end up. I have faith in all of YOU to ask the tough questions, get involved and make the right decision. United we stand, divided we fall. **VB**

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# Voting Rules and Bylaw Changes

**CORRECTIONS OFFICER THOMAS REID**  
Assistant Executive Director

As I hope you have all noticed, during the month of January the LVPPA Executive Board members tried to attend briefings at all the area commands and major bureaus and sections throughout the Department. We try to get out and meet with all of you at least a couple times a year. This last round of briefings was to apprise you all of the upcoming contract negotiations that will be underway by the time of this publication and to get input from you on what you would like us to bring to the table during those negotiations, as well as to obviously discuss what might occur at negotiations during these tough economic times.

One of the things we learned during these briefings was that many of you would like the association to develop a better process for our members to participate in contract ratification votes. Specifically, many of you were interested in the PPA exploring the possibility of using an electronic system for you to cast your vote for ratification of the Collective Bargaining Agreement (CBA), mailing your ballot for or against ratification to your home or developing a system of on-site voting at the various area commands and bureaus so that you can cast your vote there.

Currently, the process for voting to ratify a proposed Collective Bargaining

Agreement is set forth in the Bylaws. LVPPA Bylaw 29 states, in relevant part, that:

- 29.01 Voting to ratify or reject a new Collective Bargaining Agreement, to amend a provision of a current Collective Bargaining Agreement and to approve or reject a Bylaw modification, shall be in person at a central location as determined by the Election Committee. The Election Committee shall have the authority to establish satellite voting areas in each of the areas staffed by Resident Officers, in order to address their special geographic needs.
- 29.02 The Election Committee shall provide notice to all those entitled to vote of the upcoming election at least two weeks in advance of the election.
- 29.05 Those entitled to vote on a proposal (whether a contract, contract amendment or Bylaw(s)) shall be given a reasonable time to appear and vote in person at the voting location established by the Election Committee. For purposes of this Bylaw, "a reasonable time" shall mean that the voting location will be open for seven (7) consecutive days, 0600-2000 P# 8236 hours, to accommodate the schedules and shifts of those entitled to vote.

The LVPPA does several things for an upcoming ratification of a CBA. First, it provides notice to all members at least two weeks in advance of an upcoming vote. Second, it gives reasonable time for you to drop by the LVPPA and vote. The PPA office is open for seven (7) consecutive days, from 0600-2000, to accommodate the various schedules and shifts of our members. Third, an Executive Board member or Director will be available during the voting days and times to answer any questions you have about the CBA. And lastly, we ensure AMs are sent during each patrol shift as a reminder to vote, in addition to e-mails to the members, via "LVMPD Everyone" notices. While we understand that a few officers will not be able to vote due to vacation plans, out-of-state training and other factors, we believe that the vast majority of you will have a reasonable opportunity to come and vote, should you choose to exercise that opportunity.

I want to assure you all that the current practice of ratification voting was not developed randomly. In fact, when the Department was much smaller and there were only a few area commands, there was the ability to have voting at each area. However, as we have grown and as officer transfers have become routine, the current practice was developed. We believe that it is the method that imposes the least burden on our members while still allowing us to protect the integrity of the voting process.

Nonetheless, in light of your concerns, we are going to look into possible electronic voting, as we too are always looking at ways we can improve what we do. Keep in mind that if we do move to such a system, it will not be in place for this round of ratification voting. Additionally, if anyone is interested in changing the LVPPA's current practice of how we conduct ratification voting, they can submit a proposed bylaw change to the association in accordance with LVPPA Bylaw 31, Bylaw Modification. For more information or to receive a copy of the LVPPA Bylaws, please contact the LVPPA at (702) 384-8692. Keep in mind that any proposed change must not be cost prohibitive and it must have provisions in place ensuring that a member is casting the vote and that the member is only casting one vote.

In our 2001 CBA ratification vote, only about 340 members cast a ballot. In 2005 and 2009, our voting percentage has risen to about 51% of member casting their ballot. We hope to have an even bigger turnout this year. **VB**

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# Outside Employment

## CORRECTIONS OFFICER KENNETH LOCHNER

Treasurer

We all know that the Las Vegas economy as been hit really hard over the last 18 to 24 months. And so have the families of many of our officers. Some of our fellow employees' spouses have lost jobs, some are upside down in houses they cannot sell, some are facing cutbacks to hours they are used to working and some have seen a reduction in overtime hours available for officers to work. I know that at the Detention Center specifically, overtime has been cut significantly or to almost nothing. The bottom line is that Metro families are being hurt financially across the board.

Over and above these direct impacts we are facing, I know that there are a lot of officers whose spouses are school teachers or work in other industries hit by the tough economic times. Sadly, our governor is threatening to get rid of collective bargaining, or at least suspend it, so that he can make considerable cuts to the already-low pay that the teachers and others receive.

Many officers have been able to soften the blow of these tough economic times by earning supplemental income through outside employment. Unfortunately, an officer has to jump through a number of hoops and follow the Department's outside employment policy (5/101.35). You should all know that to properly be working in an outside job, you first have to fill out a request for outside employment (LVMPD Form 9), as well as provide the Department with a letter of indemnification (LVMPD Form 88). These documents must all be provided to your immediate supervisor, and then your request for outside employment starts up the chain of command for approval or denial.

The outside employment policy precludes an officer from working more than 24 hours in a week, in addition to your regular workweek at Metro, but the Department can limit you to fewer hours as well. For those of you working in the jail in particular, I know that it is fairly easy to work a full 24 hours on your RDOs, especially over your four days off. Previously, there was quite a bit of overtime available for officers to work at the Detention Center. Now, however, the overtime has been cut back to almost nothing and the outside employment hours one is allowed to work are limited by policy. I believe it would be helpful to Metro families that are hurting financially for this 24-hour limit on outside employment to be raised.

It should also be noted that the outside employment policy contains a list of specific jobs that officers are expressly prohibited from working. And there is even a catch-all phrase allowing the Department to prohibit other jobs: "Upon review and consideration of applications, other occupations may be determined not acceptable." While some of the precluded activities are understandable — i.e., private detective work or working in the retail liquor and gaming industries — it might help ease the burden of the downturn in the economy if this list of prohibited jobs could be reevaluated and possibly shortened.

There is also an outside employment board whose responsibility it is to screen requests for outside employment to ensure consistency and equity of application. This board is to meet quarterly to audit all requests for outside employment based upon a list of established guidelines. I bring up this board simply to note that the association has received complaints from members who have sought outside employment and been denied, but the members believe the board did not make the appropriate inquiry into the company the officers wished to work for. Specifically, a group of officers was told that the board was seeking an opinion from the state about a company in question, but the officers believe that their requests for outside employment were denied without the board ever really looking for or receiving input from the state.

In our recent round of briefings, many of you raised concerns and asked questions about outside employment, wondering whether there may be some ability to address the concerns of limited jobs and limited hours allowed to be worked in outside jobs. These concerns are undoubtedly the result of the challenges we are facing economically and the sad reality that many of our fellow Metro families are hurting financially. Know that we share your concerns and always strive to bring your issues to the attention of the Department. I would hope that Metro and the outside employment board would keep an open mind as they evaluate the various requests that come across their desk, knowing that our Metro families are directly impacted by their decisions.

If you have any thoughts on this issue, I would appreciate your input, so feel free to call or e-mail me. **VB**



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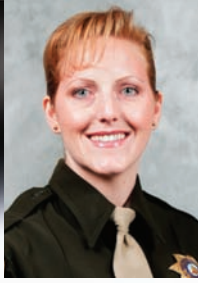
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# PPA Local Judicial Endorsements

## DETECTIVE MICHELLE R. JOTZ

Director of Governmental Affairs

As promised, the Political Action Committee (PAC) held endorsement interviews for the local judicial races in January. We intended on only holding interviews during the week of January 19-21, but we were overwhelmed with the number of candidates who wanted to meet with us to ask for our endorsement and ended up running two additional days of interviews. We had nearly 60 interviews during those sessions, and you should be thankful to the panel of folks who participated in the process. Retiree Representative Mike Malone (our former senator), Enterprise Area Command Representative Mike Ramirez, Southeast Area Command Representative Steve Mauri and Bolden Area Command Representative David Olive were our Board representatives who gave their time to sit through more than five days of interviews that were held every 45 minutes. I was also present for every one of the interviews and some of our Executive Board members participated as well (Assistant Executive Director Tom Reid; Secretary Paul Bigham; Treasurer Ken Lochner; Sergeant-At-Arms Darryl Clodt; and our former Sergeant-At-Arms, Kevin C. Barker).

Prior to the interviews, I sent personal e-mails to candidates who listed an e-mail address when they filed for office. If I didn't receive a response by e-mail or if no e-mail was listed, I attempted to contact the candidates by phone. If neither an e-mail address nor a phone number was listed, I was unable to contact candidates to ensure they scheduled an interview. There were some candidates who chose not to interview (A defense attorney thought her clients would have an issue with her interviewing with the police. That tells me that she can't be impartial on the bench ...) or some who did not respond to my attempts to reach them, so they were not interviewed or considered for an endorsement. We did have a few members contact us about particular candidates, and that information was put into the candidate's file for review. Those of you who contacted us should see that it did have an impact on whom we endorsed (see the list below)!

Once the interviews were complete, the PAC had the daunting task of narrowing down whom we thought were the best candidates. Those decisions were then presented to the entire Board of Directors, who represent you (the members), as recommendations for endorsements. In some races, there were several people we thought were well-suited, and we made the determination to wait until after the primary election to provide any endorsements. It is our hope that, through the primary process, the field will be narrowed enough for us to make a wiser decision.

During our interviews, one of the questions we asked was, "Why are you seeking the endorsement of the Police Protective Association?" Overwhelmingly, we were told that our endorsement was one of the, if not THE, most important endorsements. Candidates are aware that the public pays attention to what our members think.

The following are the endorsements given by the PPA in each of the local judicial races:

- District Court Judge, Department 26: Kurt Kay Harris
- District Court Judge, Department 27: Nancy Allf
- District Court Judge, Department 28: Jack Howard
- District Court Judge, Department 29: Kenneth E. Pollock
- District Court Judge, Department 30: no endorsement yet given
- District Court Judge, Department 31: Phil Dabney
- District Court Judge, Department 32: Rob Bare

- District Court Judge, Family Division Department A: no endorsement yet given
  - District Court Judge, Family Division Department B: Gloria Sanchez (incumbent)
  - District Court Judge, Family Division Department C: Steve Jones (incumbent)
  - District Court Judge, Family Division Department D: no endorsement yet given
  - District Court Judge, Family Division Department E: Chuck Hoskin (incumbent)
  - District Court Judge, Family Division Department F: no endorsement yet given
  - District Court Judge, Family Division Department S: no endorsement yet given
  - District Court Judge, Family Division Department T: no endorsement yet given
  - Justice of the Peace, Las Vegas Township, Department 2: Joseph S. Sciscento (incumbent)
  - Justice of the Peace, Las Vegas Township, Department 3: Tony Abbatangelo (incumbent)
  - Justice of the Peace, Las Vegas Township, Department 4: Melissa Saragosa (incumbent)
  - Justice of the Peace, Las Vegas Township, Department 6: William "Bill" Kephart
  - Justice of the Peace, Las Vegas Township, Department 7: Robert Kurth
  - Justice of the Peace, Las Vegas Township, Department 9: Joe Bonaventure (incumbent)
  - Justice of the Peace, Las Vegas Township, Department 13: no endorsement yet given
  - Justice of the Peace, Las Vegas Township, Department 14: Conrad Hafen
  - Justice of the Peace, Searchlight Township: no endorsement yet given
- We still have interviews in other races to conduct. They are as follows:  
 Statewide races: February 8-12, February 23-25.  
 Local non-judicial races: March 16-18.

As I told you in my last article, WE NEED your input about these folks. Please give us your input on the remaining races so that you are a part of this process that really does affect you in your everyday life.

At the time of my writing this, the governor was planning to announce the dates for the special session of the Legislature. Since that session will probably be over and done with by the time this issue goes to print, I will have to give you updates on the session in a different venue.

I can be reached by e-mail at [mjotz@lvppa.com](mailto:mjotz@lvppa.com); cell phone at (702) 429-7202; or in the office at (702) 384-8692, ext. 220 P# 13448. I look forward to hearing from you! **VB**

## INSIGHT

Let us never negotiate out of fear, but let us never fear to negotiate.

— John F. Kennedy





# What is "The Department"?

**DETECTIVE DARRYL CLODT**  
Sergeant-At-Arms

I have heard the phrase "The Department" a million times, and I think we all take it for granted that when we use that phrase we mean the same thing. But do we? I really believe that it means different things to different people. I will throw some thoughts out there and let you determine what "The Department" really is.

Some may think of the administration when they think of "The Department." So what is the administration and what is its role in "The Department"? I think most of us would agree that the administration includes at least those of the rank of captain and above, and maybe even includes lieutenants and sergeants as well. But is this group of managers and supervisors "The Department"? I find it ironic that in order to promote to and become part of the administration, you have to be a police officer first, and probably a pretty good one. And one would also assume that those of rank all remember what it was like to have a below-average or even poor-quality supervisor. You would think that our supervisors, armed with this knowledge and now in a position with the power and ability to change things, would strive to be the best that they can be. You would think that our supervisors would strive to be great role models and teachers and to remember what it was like when they were out on the street and, as a result, unquestionably support their officers when push comes to shove. If the decisions our supervisors make do not help the rank and file and make "The Department" better, then what is the point of promoting in the first place?

We can also look at the phrase "The Department" from the view of the troops on the street and the employees in the offices. Is "The Department" the police officers? Is "The Department" the civilian support staff? How can we, the troops ourselves, be "The Department" if we don't make the decisions, don't make the policies and don't make the final decision governing our agency? I still remember why I chose to make law enforcement my career; I wanted to help people, to go after bad guys and to make my community safe. With this in mind, I wonder why so many of us seem to try to alienate our citizens in the way we deal with them and talk to them. I wonder if some of our conduct would be the same if we kept in mind that the person we had stopped for a citation was the civilian who was paying our salaries and whether that would affect how we deal with that individual. Do we ever give appropriate credit to those who help us do our job? Remember that before a policeman arrives on a call, more than likely a civilian has already started the process, answering the call, taking and evaluating information, beginning a report. And before a commissioned officer puts someone in jail, a civilian has processed the crime scene and given us the evidence to help us do our job. In some agencies, police officers do all these jobs, so I wonder ... what this thing is we call "The Department"?

Finally, let's look at it from the public's perspective. Frankly, this may be the most important and relevant view of all, and one we should certainly all consider. When somebody needs help, whom do they call? They call the police department. But who shows up to that call, and do you really think that members of the public care, so long as help and assistance arrive? For the sake of argument, let's say that "The Department" is all these things. When the public cries out, "The police department has failed us," are

you commissioned officers of "The Department" turning your heads and saying, "That isn't me they are talking about"? Are you non-commissioned personnel, who are generally the first ones that the public has contact with, the ones they are talking about when the public believes they have been failed? Let's not forget the managers and supervisors, considering they make all the rules, policies, procedures. Do you think the public is talking about you as well when they express their dissatisfaction?

That all being said, I think we need to recognize that we all are "The Department." The administration, the commissioned officers and the civilian employees are all integral parts of this agency, without which we could not operate and succeed as a whole. Despite some of my comments above, I truly believe this is the best agency in the country to work for; if I did not think this, I would be working elsewhere. We are the best because the men and woman of this agency make it so. We as an agency are recognized across the country as one of the top law enforcement agencies around. I lived in Washington, DC, for almost a year in my last assignment, and they would all ask about and praise our agency. We make darn good money, which this union has fought hard for over the years. We also have great, state-of-the-art equipment; just ask some agencies about the poor condition of their vehicle fleets.

In closing, I would just say that whether you are part of the administration, a civilian employee, or a commissioned officer, do not forget where you came from on "The Department" and do not forget that we are all part of the same team with hopefully the same common goal, which is to keep our community safe. Remember that regardless of your position with this agency, we are all "The Department," and when a citizen calls for help, they don't care whether an administrator, a director, a detective, a police officer, a LEST, etc. shows up; they just want "The Department" to help. So if you are the administrator who is unwilling to stand up and back your troops, or you are the police officer who treats members of the public like second-class citizens and who thinks "The Department" can't function without you, then here is my advice: If you aren't doing the simple, most basic task of our agency — TO HELP WHEN CALLED UPON — then it might be time for you to move on to that thing you want to do, because you are not part of who we are ... you are not "The Department." **VB**

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**JOHN DEAN HARPER**  
General Counsel

## Should You Leave Your TASER at the Substation?

I have heard a lot of concerns regarding the LVMPD's most recent Electronic Control Device (ECD) policy (November 12, 2009). Additionally, there has been a lot of media hype surrounding the December 2009 9th Circuit Court of Appeals' decision in *Bryan v. McPherson*. Some officers are concerned that the new policy is so restrictive that it does not make sense to continue to carry the LVMPD's ECD, the TASER™ X-26. At the same time, the *Bryan* case seems to be the most media-hyped case in a long line of cases, articles and shows deriding TASER™. There is a belief that the LVMPD and other agencies are overreacting to the continuous "bad press."

### *Bryan v. McPherson*

This case was pending in federal court and the defendant officer, city and police department filed a motion asking for dismissal. The court denied the request and the defendant officer, city and police department appealed to the 9th Circuit Court of Appeals. Some of the facts in dispute were that Officer McPherson claimed he ordered the plaintiff, Bryan, to stay in his vehicle, while Bryan denies hearing that command. Additionally, McPherson claimed that prior to deploying the TASER™, Bryan took a step toward him, which Bryan denies. Because the matter on appeal was a decision regarding a motion for summary judgment, there was no trial yet, and the non-moving party, here Mr. Bryan, was entitled by law to have the facts to be construed in his favor. Therefore, at a trial on the merits, the decision by the Federal District Court could be different.

In any event, based upon the facts as plead by the parties, with all due respect to the officer (remembering that a trier of fact has not made any findings), it appears as if he overreacted. The analysis that the 9th Circuit relied upon appears to be no different than any other Fourth Amendment excessive-force cases in the 9th Circuit.

The following is a brief summary of the facts the 9th Circuit relied upon.

- Bryan was stopped for a seat-belt violation;
- He was yelling expletives at himself and hitting the steering wheel;
- He got out of vehicle;
- He was agitated, standing outside his car, yelling gibberish and hitting his thighs;
- He was wearing only his boxer shorts and tennis shoes (therefore, it was apparent that he was unarmed);
- He did not level a physical or verbal threat against the officer;
- He was standing, without advancing, 15-25 feet from the officer between the door and the body of the car;

- He was not facing the officer when he was shot with the probes;
- Officer McPherson did not warn Bryan before firing;
- The electrical current immobilized him; he fell on his face, fractured four (4) teeth and suffered facial abrasions and swelling;
- He was arrested and taken by ambulance to the hospital.

The 9th Circuit analyzed the case under the Fourth Amendment's prohibition against unreasonable seizure. In determining if the force was excessive, the court found that, although the TASER™ and stun guns fall into the category of non-lethal force, that force must be justified by the need for the specific level of force employed. The court characterized being hit with the TASER™ as a "painful and frightening blow" — and TASERS, like the X-26, constitute an "intermediate or medium, though not insignificant, quantum of force."

It further examined, under a totality of circumstances analysis: a) whether Bryan was an immediate threat to the officer or others; b) whether Bryan was actively or passively resisting; c) whether the crime Bryan allegedly committed was severe; d) whether Bryan was attempting to evade arrest by fleeing; e) whether McPherson gave Bryan any warnings; f) Bryan's apparent mental status; and g) whether McPherson could have used less-intrusive force.

The court found that Bryan was only stopped for a seat-belt violation, was not a dangerous felon, was not a flight risk and did not offer resistance. Further, it found that — because it was obvious that he was unarmed, did not level a threat, was standing 15-25 feet away and not advancing and was not facing the officer when hit by the probes — that he was, at most, a disturbed and upset young man, not an immediately threatening one. In addition, it found that the officer failed to warn Bryan and did not consider other less-intrusive alternatives, such as waiting for backup officers he knew were en route.

As such, the court concluded that before the use of an intermediate or medium weapon, the user must show a strong government interest. What I found most instructive and maybe most disconcerting about the decision was the court's analysis of Bryan's resistance. The court quoted a prior case in the 9th Circuit by stating: "A simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such concern." It further stated: "\*\*\*\* the objective facts must indicate that the suspect poses an immediate threat to the officer or a member of the public."

In this situation, the use of a TASER™, i.e., an intermediate or medium level of force, was deemed to be not objectively

(continued on page 11)

## LEGAL CORNER

(continued from page 10)

reasonable under the circumstances and therefore excessive force and a violation of Bryan's Fourth Amendment rights.

It should be noted that it is not clear whether the requirement for an immediate threat applies to the use of an ECD in its touch- or drive-stun mode.

The decision has not changed the case law as it applies to the use of ECDs. The United States Supreme Court case *Graham v. Connor* has long required the "immediate-threat" element. The court goes to great lengths to voice its understanding of the efficacy of ECDs and the concurrent reduction in injuries to suspects, officers and bystanders from their use. It also indicates its collective understanding of an officer having to make a "split-second" decision. However, from the facts of the case, viewed most favorably in Bryan's favor, the court found that he did not pose an immediate threat, and that McPherson overreacted. That is it.

This case is instructive in that it reiterates that an officer should issue a warning prior to using an ECD, should consider other alternatives to using it and must have objective reasons to indicate that a suspect poses an immediate threat. I will discuss below how those concerns are addressed by the current policies. What really happened is that the *Bryan* case was on the front pages of all the major websites and newspapers, and to the public it represented another case of law enforcement excessive force and abuse. Those of us in the law enforcement community know that it was an anomaly. I am surprised that the city did not settle the case prior to it proceeding so far in the court system.

### LVMPD's Policies

It appears that the LVMPD's Use of Force Policy (6/002.00) and the updated Use of the Electronic Control Device Policy (6/003.00) may not

comply with the *Bryan* ruling. Also, there is a concern that 6/003.00 and the *Bryan* ruling may go too far as to encourage an officer to use his/her baton or OC spray instead of the preferred use of the ECD.

### Use of Force Wheel

The first concern arising from the *Bryan* case requires a review of the Use of Force Policy. The Use of Force wheel allows ECD use when the suspect is engaged in counter resistance and during an officer's attempt to arrest and control the suspect. Counter resistance is defined as: "The person's verbal or physical actions are intended to prevent an officer's control, **but are not directed at harming the officer.** Examples include, but are not limited to, walking away, breaking the officer's grip, holding onto a fixed object or locking arms to another during a protest or demonstration." [Emphasis added.]

Physical resistance is defined as: "The resistance offered by a person in the form of active physical aggression towards an officer or another person and can include the threat of or actual use of a weapon by a person against an officer or third party."

Does a suspect's counter resistance under this definition rise to the level of immediate threat as articulated by the 9th Circuit? Does the decision mean that an officer may use the ECD in a touch-stun or drive-stun mode only in response to counter resistance?

A look at the ECD policy is not helpful in addressing the concerns.

### ECD Policy

6/003.00 now states: Deployment: Police Officer/Corrections Officer

1. Gives warning, when practical, to the subject and other officers

(continued on page 18)

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# Sheriff's Message

SHERIFF **DOUGLAS C. GILLESPIE**

As I am preparing this message to you, members of the PPA, I am remembering what it was like 29 years ago when I left family and friends in a small upstate New York town and came across the country to join the Las Vegas Metropolitan Police Department. It was one of the best decisions I ever made, and as I shared in the State of the Department in January, it was then that I first learned about Mighty, Mighty Metro.

Throughout my 29 years, I have seen many difficulties, and we have always persevered because we stood together: strong, resolute and united. Our strength as an organization is derived from the varied backgrounds and cultures that form the LVMPD. Long before others were praising diversity, we embraced it, because once you became a part of Mighty, Mighty Metro all of the other differences were less significant.

At the same time, these diverse and varied backgrounds will create situations where we won't always agree. It means we challenge each other to look at things from different perspectives. We aren't satisfied to do things how we've always done them. While that constant change and growth as an organization can be stressful, we have been able to thrive.

It is this culture of change that has allowed us to thrive in our current situation. As other entities are struggling to meet the demands of the economic downturn, we have stayed ahead of the curve. Much of that is because of our police training and the SARA model. We were trained to scan, analyze, respond and assess situations in creative ways.

We have been doing just that for the past two years when it came to our budget. We have taken a close look at all of our operations and found ways to be more efficient and effective, and we continue to assess our operations for additional improvement. Last year, we came in with a zero-percent budget

increase, after routinely receiving 10% increases to our budget every year over the past 10 years. This year, we have to cut deeper and are trying to reach a five-percent decrease over last year. And, folks, we are close, but we're not there.

As you know by now, 88% of our budget consists of salary and benefits, so cutting five percent of the total budget without touching salary and benefits really amounts to an almost 42% reduction in our operating budget. We have been able to offset some of that with the elimination of vacant positions, yet you can see we have had to make considerable cuts to our operating budget in order to reach our goal. We simply cannot continue to make those cuts and continue to provide the service our community needs.

We can hold off on purchasing replacement vehicles and computers for a year or so, but eventually those items will have to be replaced. Fuel costs continue to climb and even though we have been able to save some funds by reducing take-home cars, we will always have to patrol our community. We can scale back our public hours at substations and reduce flight time for Air Support based on our actual service needs. We can't close our doors or stop flying altogether.

If our economy continues to worsen, we must be prepared to come to the table and talk about the largest expense to our organization: salaries and P# 8110 benefits. I have been having candid discussions with all of the unions about our obligation not only to our fellow Metro employees and their families, but to our community. My first priority in these discussions is keeping people who are working for Metro now working tomorrow.

I am committed to no layoffs in the face of Nevada being one of the hardest-hit states in the nation as far as the economy and budget cuts. In the history of this agency, even through other economic downturns, we have never been forced to lay off police officers. I will do everything possible to ensure that does not happen on my watch.

I know that we have worked hard for the salary and benefits that we now enjoy and a reduction in any form is not easy. I know it is a bitter pill when others in public service are compensated more generously and with less responsibility. I also know that when our families are in need, we do whatever it takes to help out, and I expect no less from our Metro family.

As we go into negotiations, I ask that you keep two things in mind. First, the members of the Department negotiating teams are many times personally affected by the decisions made at the table, so they do not enter negotiations with an "us-against-them" attitude. Second, it is my direction to the negotiating teams that this round of negotiations will be about compensation only. We are not going to muddy the waters with issues outside of that scope, as there will be enough at the table to deal with.

My promise to you is that I would not ask you to negotiate if I am not willing to sacrifice myself. In that spirit, I have once again notified the county that I will not be accepting the raise that is provided to the Sheriff by statute. In fact, I have asked that my current salary be reduced by five percent. All appointed employees have been notified that they will not be receiving their educational incentive and clothing allowance in the next fiscal year. Those steps were taken not only because they were the right thing to do, but also as a show of good faith by me as we enter negotiations.

Although some think the art of negotiation is the art of getting what you want, I believe the art of negotiation is to reach an agreement, even in difficult times, that serves the needs of all. If we get to the heart of the needs of our employees and the needs of the Department, we will be able to negotiate a contract that serves us all. **VB**

## INSIGHT

Build for your team a feeling of oneness, of dependence upon one another and of strength to be derived by unity.

— Vince Lombardi

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# Too Much Technology? Too Many Gadgets Risking Our Safety

BY JOHN WILLS

Training Contributor for Officer.com

I just finished reading an article in my local newspaper, *The Free-Lance Star*, which described a new electronic ticketing system now in use by our town's police department. The high-tech device allows an officer to scan the barcode on a traffic violator's driver's license. The data is automatically analyzed by the machine, which then inputs the information onto the ticket. Once the form is complete, the officer prints copies of the ticket from a printer, which is located between the two front seats. He then goes forward to have the violator sign the ticket. The advantages over handwritten tickets are obvious. First, the process is quick; the form is complete in seconds. Moreover, there is no chance the ticket will be illegible, a perennial problem with written reports.

However, reading about this latest piece of technology got me thinking. How many more pieces of electronic equipment can we fit inside such a small compartment? Moreover, how much attention will be needed to monitor and operate all of it? I'm not so much concerned about the electronics themselves, except to the extent that they interfere with our ability to be in touch with our surroundings. Recent incidents involving officers ambushed in their vehicles, especially at night, gave me pause to think that perhaps we are setting up a perfect storm for the bad guys to get the jump on us.

What immediately came to mind was the incident in the state of Washington on Halloween night. Two Seattle cops were in their patrol car reviewing paper work when a knuckle dragger drove by and opened fire. One officer was killed; his partner was wounded. Just one month later, in the same area, four officers were murdered while they sat in a coffee shop. Granted, they weren't killed while in their police vehicles, but they were distracted, nevertheless, by focusing on their laptops, putting them further behind the action-versus-reaction power curve.

Today's patrol vehicles are loaded with so much gear that it's difficult for an officer to observe and absorb what's going on around him. Take a look in most cars and you will probably find the following equipment: dashboard cam; hand-held or mounted speed enforcement tool; mobile computer terminal; console with radio, lights and siren controls; Department-issued and/or personal cell phone; gun rack; electronic traffic ticket device; printer; fingerprint reader; and, finally, individual gear bag. That's a ton of stuff to operate and keep track of while trying to drive and/or watch for violations and bad guys.

There is no question that all of the above innovations have enhanced our ability to do our job quickly and efficiently. We've eliminated the middleman to some extent — not having to wait for name checks and license plates to be run by dispatch, etc. Nevertheless, it seems to me that we sometimes pay too much attention to the electronic side of the house, rather than the people side. We pull someone over or detain someone and we can't wait to get back inside the unit to run the guy on our terminal. That's great if you've already used your skills to question the guy, get a read on his body language, his eyes, speech pattern, etc. But perhaps younger cops in particular may defer to use the electronics first, rather than stare a hole in the perp and see what reaction he gives. Maybe some of our street smarts are being lost in this tsunami of new technology.

Back in the day, when all we had was the police radio and good time radio in cars, we were cautioned by our bosses and old-timers not to use the good-time radio — it was too much of a distraction. Even though the car radio only had AM stations, nevertheless, guys turned them on. This made for some missed radio assignments, and who knows how

much else we didn't hear by not tuning our ears to the street.

What I presently see as a potential threat to officer safety is the laptop computer. Utilizing it takes a significant amount of concentration. Anytime we must focus on anything inside our cars, rather than outside of them, we put ourselves at risk. What really scares me is when I see a unit at night, either on patrol or parked, with the officer inside, lit up by the computer screen. Talk about a target ... From a tactical standpoint, sitting stationary at night, filling out a report with the interior illuminating the officer, is a recipe for disaster. I cringe whenever I see it, but that's a whole other issue. My personal opinion is that paperwork is best done at the station, at least in the context of officer safety.

Don't get me wrong — I'm not bashing technology — it's a wonderful thing. Better weaponry, safer body armor, stronger radios, all the improvements that have been made in policing have changed the face of law enforcement. But with change comes sometimes unwelcome results as well. My purpose here is not to bash technology, but to alert us to what new challenges need to be overcome by virtue of their arrival. Not all change is entirely good; some of it has a downside. It's up to each of us to recognize that and prepare to overcome the negatives.

Stay safe, brothers and sisters!

#### Author Profile:

John M. Wills spent 33 years in law enforcement as a Chicago police officer and FBI special agent (retired). He is a freelance writer and speaker whose first book, *Chicago Warriors Midnight Battles in the Windy City*, is now available online at Amazon and Barnes & Noble. His second book, *Gripped By Fear*, is available through Total Recall Press. Contact John through his website: <http://www.johnmwills.com>. VB

## INSIGHT

Coming together is a beginning; keeping together is progress; working together is success.

— Henry Ford

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# Navigating Your Way Through Child Support Issues

BY GRETA MUIRHEAD, ESQ.

I have been asked to write for *Vegas Beat*. The purpose of my articles is to inform, train and hopefully entertain. Most importantly, however, my goal is to give you the information that you need in your professional and personal lives, without a lot of fluff, boring legalese or sugar coating. If I do fall into the legalese trap, it's merely to give you the supporting authority for some of the statements that I make and/or legal positions that I take. By way of introduction, I have been a licensed attorney in private practice in the Las Vegas area since October 1990. While I have handled a variety of cases, and have quite a few interesting "cocktail stories," my focus, for most of those years, has been family law and guardianships. I have just enough background in other areas, including real estate, evictions, misdemeanor criminal defense, contracts and bankruptcy to make me a bit dangerous! I am the proverbial "Jane of all trades and Master of some."

In addition to my private practice, I have been hearing child support cases as an alternate family court hearing master since March of 2002. As an alternate child support hearing master, I fill in when the regular child support hearing masters are ill, on vacation or at seminars. I have seen several LVMPD correction officers, street officers and detectives in the child support courtroom standing behind the table labeled "defendant" or "respondent." Just because you are there doesn't

mean that you are a bad guy or gal. It merely means that the custodial parent is exercising his or her statutory right in Nevada to have the state collect child support via a wage withholding. Remember, you could be current (not behind) in your child support obligation and still end up in UIFSA (Uniform Interstate Family Support Act) — more commonly known as child support court. Having your wages garnished through the child support court isn't necessarily the kiss of death so many parents think it is.

In child support court, the hearing master will either enforce an existing order or will work, under certain circumstances, with you to create a new one. Always bring six months' worth of paycheck stubs with you — and if you have a new baby or kids from a more recent relationship, bring copies of their birth certificates. Don't forget also to bring proof of the health insurance, dental and optical premium costs to insure your dependent children. If you are married and your new spouse is eligible to cover the children on his or her plan, bring that information with you, too. Nearly always, the court will give you a one-half credit of the premium cost of the insurance if you can isolate the cost to enroll and maintain your biological children on your insurance or your spouse's. Please make sure that the custodial parent knows that the children are on your insurance or their stepparent's and that the custodial parent has the necessary card, claims forms, etc. The one-half credit for the premium cost is taken straight off the top of your ultimate monthly child support obligation.

Speaking of credit, please do not try to convince the court that just because you support your stepchildren, your live-in partner's children or your aging parents that you are entitled to a "credit" or offset for them. Per Nevada law, you are only entitled to a possible credit, offset or reduction in your monthly child support obligation if you have a legal obligation to support another. While some of your paycheck may be going to take care of the stepchildren in your household, you do not have a legal obligation to support them. They do not count for purposes of an offset. Nor, too, does the cell phone you provide your kid or the Wii you bought for Christmas.

In the coming months P# 6099, I will be talking about different child support issues, including how child support is calculated, when and if overtime is included and what happens if you have your kid 40% or more of the time. Also, I will discuss why, surprisingly, you should be happy that the district attorney is establishing your child support arrears (old child support) and setting your interest and penalties.

I will also be addressing and helping you to properly interpret Nevada guardianship orders and other family court orders. You will learn what the term "co-guardianship" means and doesn't mean. Hopefully, by learning some of the nuances in the Clark County family law system, you will be better able to serve not only the public, but your own needs as well.

If you have questions that you would like answered in the coming months, please direct them to me. My e-mail address is [greta@toughtimeslegal.com](mailto:greta@toughtimeslegal.com). I will do my best to answer as many of the questions that I can privately. Those questions that I believe present good learning opportunities or are just simply really great questions will be published, anonymously, in the next issue or issues of *Vegas Beat*. The winner or winners of some of the best questions I receive or whomever give or gives the best answers to the "What would a smart cop have done?" game that we will be playing in the next few months will win gift cards to Coffee Bean and Tea Leaf or Baja Fresh. All winners are solely determined by me, and all gift cards are from my "stash" that I have acquired through my various trips to Costco.

On a closing note, since I am not a member of LVMPD or LVPPA, all opinions, advice and expressions are solely my own — and LVMPD, LVPPA or *Vegas Beat* should not be viewed as endorsing me or my advice.

I look forward to hearing from you all. **VB**

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# Police Week 2010

## DETECTIVE CHRIS COLLINS, EXECUTIVE DIRECTOR

As many of you know, National Police Week is held every year in Washington, DC. This is a great event, and I encourage all of you who are able to attend to do so. It is a week full of events to honor fallen officers, as well as a few of the many heroes in law enforcement.

During Police Week, our nation's capitol will be filled with law enforcement officers from all over our great country, as well as from around the world. Those able to attend will make many new, lifelong friends. These are friends whom you will cry with at the National Law Enforcement Memorial over the loss of a brother or sister from our law enforcement family. These are friends whom you will laugh with at one of the local watering holes while you tell stories of your conquests while wearing the badge. These are friends with whom you will undoubtedly raise a glass, and probably more than once, in a toast of honor to those who have paid the ultimate sacrifice while guarding the Thin Blue Line, as well as honoring those of us still guarding the Thin Blue Line.

You are probably wondering where you would meet these new friends. That is the easy part. There are many events during Police Week for law enforcement officers to either watch or participate in. I will give you a brief description of

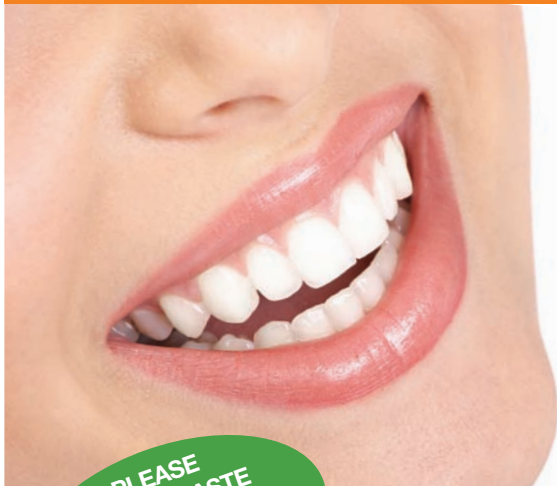
some of the events I have been lucky enough to be a part of, and I am sure there are others of which I am not even aware.

- Tuesday, May 4th, at 12:10 p.m., is the 15th Annual Blue Mass, which will be held at the St. Patrick Catholic Church, located at 10th and G Streets, NW.
- The next planned event is scheduled for Sunday, May 9th. At 9 a.m., they line up for the 14th Annual Law Ride, a motorcycle ride which will start at RFK Stadium. The procession leaves for the National Law Enforcement Memorial at 11 a.m.; upon arrival at the Memorial, there will be a short ceremony.
- On Wednesday, May 12th, at 2 p.m., the Police Unity Tour rides into the National Law Enforcement Memorial, concluding their three-day bike ride into DC from either New Jersey or Virginia. This group of riders is the single largest donor to the National Law Enforcement Memorial and Museum. Their motto is "We ride for those who died."
- Now things start to get a little busy. Thursday, May 13th, at 8 p.m., is the 22nd Annual Candlelight Vigil, held at the National Law Enforcement Memorial. Of all the events scheduled for the week, this one is a must see.

(continued on page 17)

## To All Las Vegas Police Protective Association MEMBERS AND FAMILIES

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2009.

## EXECUTIVE DIRECTOR'S MESSAGE

(continued from page 4)

salaries and benefits. Back in December, 2009, you all should have received a letter from the Board of Directors making you aware that it is our goal not to give back any pay or benefits you are currently receiving during these negotiations.

To help make this goal a reality, we have hired an economist out of Oklahoma whom I speak with on a regular basis to get advice on where the national and local economies are going. We have also hired a CPA firm out of San Francisco that specializes in forensic examinations of municipalities' books. This CPA firm is currently looking at the financial books of the city of Las Vegas. When that is complete, they will examine and analyze the financial books of Clark County and Metro. I believe that armed with the information obtained from these reports, we will be in a stronger position to protect your salaries and benefits. If you have your own ideas on how the negotiations should go, please contact the PPA.

## The Department

Now for my thoughts on the Department overall. Here at Metro, we too have experienced explosive growth over the past several years. We have a young, vibrant Department. Due to all your hard work, crime is down across the board and our favorability rating with the citizens is up. Undoubtedly, this is the direct result of the efforts of the hardworking men and women here at Metro doing exceptional work in extraordinarily difficult times. As I have told you before, the Sheriff and I don't always see eye to eye. However, through this economic downturn, I believe Sheriff Gillespie has done all he could to keep the PPA and the other associations in the loop with regard to the ever-changing situation. In my opinion, Sheriff Gillespie and his staff have worked tirelessly to avoid layoffs here at Metro. It would have been easy for the Sheriff and his staff to simply solve the budget problem with layoffs; this, however, would adversely affect public safety overall and would make your jobs more

difficult and less safe than they already are. With that said, I would like to let the Sheriff and his staff know I appreciate all the hard work they have done.

## Concluding Thoughts

Now back to my original question — IS THE GLASS HALF EMPTY OR HALF FULL? The economy and all the negative things going on in our community may well upset you and make you believe the glass is half empty. On the other hand, there is no doubt that we are better off than many of our friends and neighbors. Likewise, our situation here in southern Nevada is better than many of our brothers elsewhere in the law enforcement community. We are still employed, and so we still have the ability to put a roof over our family's head and food on our tables. I tend to look at it as the glass is half full. I hope this has given you food for thought. I promise you this: I, as well as the Executive Board and the entire Board of Directors here at the PPA, will work to once again fill the glass to the top.

As always, stay safe and fight the good fight! **VB**

# INSIGHT

Far and away the best prize that life offers is the chance to work hard at work worth doing.

— Theodore Roosevelt



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As the sun goes down, a Thin Blue Line, created by a laser, appears in the sky and thousands of people light candles and hold them high overhead. Police officers and citizens from around the world then stand in tribute as the names of our fallen brothers and sisters are read aloud, each of them a HERO in their own right. I recommend you come to this event in full uniform as a show of respect to those who have lost their lives and to their surviving family members. Ask anyone who has been there, and I believe they will tell you the trouble of the uniform is well worth it. If you cannot attend this event, the Memorial Fund is planning to offer a free webcast of the ceremony.

- Friday, May 14th, is the busiest day with six events:
  - At 8 a.m. is the National Police Challenge 50-Kilometer Race at the Secret Service training center, Laurel, MD.
  - At 8:30 a.m. is the Steve Young Honor Guard Competition, held at John Marshall Park, which is located at Pennsylvania and 4th Streets, NW.
  - At 9 a.m. is the National Police Survivors Conference, held at the Hilton Alexandria Mark Center; advance registration is required to attend this event.
  - At 10 a.m. is the Shomrim Society Kaddish Service, held at the National Law Enforcement Memorial.
  - At 4:30 p.m. is the 15th Annual Emerald Society and Pipeband March and Service, which will assemble at New Jersey Avenue and F Street, NW. At 6 p.m., the bands will march to the National Law Enforcement Officers Memorial.
  - Finally, the last event of the day is the 17th Annual Top Cops Award Ceremony. This event will start at 7 p.m. and is being held at the Warner Theater, located at 513 13th Street, NW. This is another must-see event. Officers from around the country have been

nominated for a Top Cop Award. The best 10 are selected to receive this prestigious award. Many of our own officers have won this award or received an honorable mention in the past. There is a cocktail party immediately following the ceremony. You must purchase tickets to both the ceremony and the cocktail party. The price for both is around \$100.00 dollars a person. If you would like information on how and where to purchase tickets, please contact the PPA office. I would suggest a suit and tie for this event. Don't let the price or the dress discourage you, as this is really a fantastic event.

- Saturday, May 15th, is the 29th Annual National Peace Officers Memorial Day Service. This will commence at 12 noon on the West Front of the U.S. Capitol.
- The last day of Police Week is Sunday, May 16th. At 9 a.m. on this last day is the second scheduled day of the National Police Survivors Conference. You must preregister for this event. It is being held at the Hilton Alexandria Mark Center.
- The last event I am going to write about is an all-day event, also the last day of the week, May 16th. It is Law Enforcement Appreciation Day, during the NASCAR Sprint Cup Race being held at Dover International Motor Speedway, Dover MD. Again, you must purchase a ticket to attend.

I am sure there are other events associated with Police Week that I am not aware of that would also be great to attend. I suggest you check the web for events I may have missed. Again, I encourage you to come to Washington, DC, during Police Week to HONOR our FALLEN BUT NEVER FORGOTTEN HEROES, as well as to make new, lifelong friends. I promise you: it is an experience you will never forget. **VB**

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before firing the ECD at the subject.

a. For a frontal shot, **reasonable effort should be made to target lower center mass** and avoid intentionally targeting the head, neck, groin and chest. It is recognized that the dynamics of each situation and officer safety may not permit the officer to limit the application of the ECD darts to a precise target area. If one or more darts strikes the head, neck, chest or groin, officers shall take prompt and ongoing care to monitor the condition of the subject and ensure probes penetrating these areas are removed by medical personnel. Back shots remain the preferred target area when practical. [Emphasis added.]

\*\*\*

3. \*\*\*Note: Use of the “touch stun is **discouraged except in situations where the ‘probe’ deployment is not possible** and the immediate application of the ‘touch stun’ will bring a subject displaying counter or physical resistance safely into custody.” [Emphasis added.]

Finishing up on the concerns brought on by the *Bryan* case, where exactly does the Use of Force Policy stand vis-à-vis the 9th Circuit’s ruling? My best interpretation is that ECD use in the probe mode is against the 9th Circuit’s ruling when a suspect is counter resisting during arrest and control. However, as an exception, objective facts of a risk of flight may justify ECD probe use for arrest and control. Additionally, based upon the 9th Circuit’s lack of discussing the use of the touch-stun mode, it is still a viable option during arrest and control.

The problem is the ECD policy, which discourages the touch stun except in situations where the probe deployment is not possible. I would argue that the 9th Circuit decision makes it “not possible” and therefore viable. PLEASE NOTE: Do not violate policy based upon my opinion. Utilize the current Department policy.

## Frontal Shot Concern

I have not done the research, but I can only assume the changes to the ECD policy regarding a frontal shot is in response to case law and concerns by the media and special-interest groups. My concern is that our officers are now required to shoot the bad guy in the back (that is always fun explaining) or has to have mastered the X-26 so as to take in consideration wind; humidity; movement; and, most importantly, the precise distance whereby the probes spread just enough to hit in the “lower center mass” area, but spread far enough (I am told 21 inches) to complete a disabling circuit.

In the Department’s defense, it does use limiting language such as “reasonable effort” and has specific language on what an officer is to do if a probe lodges in a more critical area. Based upon the limiting language, I feel that there should not be any concerns about leaving the TASER™ in your locker.

I believe, along with the 9th Circuit, that use of ECDs by law enforcement has significantly reduced officer injuries, suspect injuries (and deaths) and bystander injuries. Anecdotally, I have observed a decrease in officer-involved shootings since the TASER™ has been standard issue.

## How to Use the TASER™

At this point, I do not believe that you need to change your modus operandi with the X-26. If the Department sees fit to change the policy, it will. Therefore, the following is some good advice in using the X-26 or any ECD.

First, ECDs cause pain and are not risk-free, and officers need to consider the risk of secondary injuries from incapacitation and falls in determining when and how to deploy an ECD. Second, ECDs are an “intermediate or medium, though not insignificant” use of force, and every trigger pull must

(continued on page 19)



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**LEGAL CORNER**  
(continued from page 18)

be justified as a separate use of force. Third, as in any Fourth Amendment force analysis, an officer must consider the totality of the circumstances, including whether the suspect poses an immediate threat to the safety of the officers or others, whether he is actively resisting arrest or attempting to evade arrest by flight and the severity of the crime at issue. Fourth, especially when a suspect is not an immediate threat or a flight risk, when officers are attempting to use force to gain voluntary compliance, officers should warn of the impending use of an ECD, assess whether their warnings are clearly heard and understood and give a reasonable time for volitional compliance with officers' commands. Fifth, there should be regularly scheduled refresher or remedial training for officers using ECDs. And, officers should be reminded to engage suspects in a manner consistent with their department's use of force protocols, including the consideration of less-than-intermediate uses of force where appropriate.

(Reprinted with permission from Taser International's website. "Short Synopsis of the Bryan v. McPherson Decision," January 6, 2010.) **VB**

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## DECEMBER 2009/JANUARY 2010

### REPRESENTATION STATISTICS

#### LABOR MANAGEMENT BOARDS

All. Violation Date	Hearing Date	Alleged Violation(s)	Original Discipline	Decision
	12/10/09		Contract issue	Granted
6/23/08	12/8/09	Court Room Arrest Procedures (CLV)	40-hour suspension	Withdrew appeal
4/20/08	2/11/10	Use of Force	8-hour suspension	Upheld
	2/11/10	Conduct Unbecoming	40-hour suspension	Reduced to 8 hours

#### PRE-TERMINATION HEARINGS

All. Violation Date/ Hearing Date	Hearing Date	Alleged Violation(s)	Original Discipline	Decision
6/1/09	12/14/09	Conduct Unbecoming	Termination	Upheld
5/20/09	12/29/09	Use of Force / Truthfulness	Termination	Upheld/going to arb.
	1/28/10	Truthfulness	Termination	Exonerated

#### ARBITRATIONS

All. Violation Date	Hearing Date	Alleged Violation(s)	Original Discipline	Decision
8/23/09	9/8/09-9/09/09	Use of Force / Truthfulness	Termination	Upheld
	9/23/09-9/24/09	Conduct Unbecoming an Employee / Misconduct / Truthfulness	Termination	Upheld

#### CITIZEN REVIEW BOARD COMPLAINTS

Dismissed	Alt. Recommended	Referred to IAB for Review	Concurred w/IAB Finding	Pending CRB Decision
0 / 0		3	0	

#### OFFICER INVOLVED SHOOTINGS/USE OF DEADLY FORCE INCIDENTS

Date		Use of Force Board Decision	Inquest Decision	
11/1/09		1/6/10	Excusable	
11/4/09		2/16/10	Excusable	
11/18/09		2/16/10	NA	
1/5/10		2/17/10	NA	
1/9/10		2/17/10	NA	

#### INTERNAL AFFAIRS SECTION AND BUREAU LEVEL INTERVIEWS

	Declined/Canceled	Represented	Total	
	50	133	183	

#### ACCIDENT REVIEW BOARD

	Excusable	Non-Negligent	Negligent	Rescheduled
	0	0	0	0


# Now There Are **500** More Reasons Why It Pays to Read



This issue contains **TWO** ways  
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## Giveaway #1: One **\$250** prize

# 1

Members who find the hidden  in this issue of Vegas Beat and register through [www.LVPPA.com](http://www.LVPPA.com) will be entered into a drawing for \$250. You must enter by Friday, April 9, 2010, to be considered eligible. Telephone entries will not be accepted. Visit our website for more details.

## Giveaway #2: Five **\$50** prizes

# 2

We've hidden **five personnel numbers** within this issue of Vegas Beat. If your number is among them and you call (702) 384-8692 to let us know that you found it, you'll win **\$50**. If you didn't find your number this time, try again in the next issue where we'll hide five more!

Excludes P#s listed in Retirement and End of Watch sections of Vegas Beat

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- Upcoming events

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THEME PARK	TICKET	GATE PRICE	LVPPA PRICE
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Legoland	Two Day Ticket - Adult	\$80.00 one day ticket	\$49.00
	Two Day Ticket - Child (3-12)	\$68.00 one day ticket	\$49.00
Magic Mountain	One Day Ticket - Adult	\$59.99	\$25.00
	One Day Ticket - Child (under 48")	\$29.99	\$15.00
San Diego Zoo	One Day Ticket - Adult	\$37.00	\$32.00
	One Day Ticket - Child (3-11)	\$27.00	\$23.00
Sea World	Two Day Ticket - Adult	\$65.00 one day ticket	\$51.00
	Two Day Ticket - Child (3-9)	\$55.00 one day ticket	\$45.50
Universal Studios	Three Day Ticket - Adult	\$69.00 one day w/2nd day free	\$59.00
	Three Day Ticket - Under 48"	\$59.00 one day w/2nd day free	\$59.00
Wild Animal Park	One Day Ticket - Adult	\$37.00	\$32.00
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## THANK YOU LETTERS

During a time like this we realize how much our family and friends really mean to us . . . Your expression of sympathy will always be remembered.

The Leach Family

Dear PPA

Thank you so much for supporting my foundation. Your support has helped 16 of the world's poorest children go to school. I thank you and the people of Guatemala thank you.

Best regards,

Detective Damon Young  
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Visit the PPA to obtain your bumper sticker.



## CALENDAR

2010

- March 4 General Membership Meeting 5:00 p.m.
- March 14 Daylight Saving Time begins
- March 17 St. Patrick's Day
- April 21 Administrative Professionals' Day

*\*Recent Bylaw modifications have moved General Membership Meetings to quarterly rather than monthly. If you need to present something before the Board prior to a regularly scheduled General Membership Meeting, please contact the PPA office so you can be accommodated.*

## RETIREMENTS

2/22/2010 Daniel P. Barry, P# 2133

PO Captain

### EDITORIAL POLICY

1. Opinions expressed in *LVPPA Vegas Beat* are not those necessarily those of the Las Vegas Police Protective Association.
2. No responsibility is assumed for unsolicited material.
3. Letters or articles submitted shall be limited to 500 words and must be accompanied by writer's name but may be reprinted without name or address at writer's request.
4. Freedom of expression is recognized within the bounds of good taste and limits of available space.
5. The Board of Directors reserves the right to edit submissions and/or include Editor's Notes to any submitted material.
6. The deadline for submissions to *LVPPA Vegas Beat* is approximately 30 days prior to the issue date.

## CONGRATULATIONS TO THE CONTEST WINNERS FROM THE LAST ISSUE!

**Hidden Poker Chip Contest (\$250)**  
Christopher Reahm, P# 9991

**P# Contest (\$50)**  
Lisa Tsirikos, P# 13656  
Timothy Townley, P# 7521  
James Briggs, P# 8545  
Lawrence Murdock, P# 7608



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