



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

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January/February 2024



Sergeant Michael Abbate

NEVADA DEPARTMENT OF PUBLIC SAFETY —
HIGHWAY PATROL DIVISION



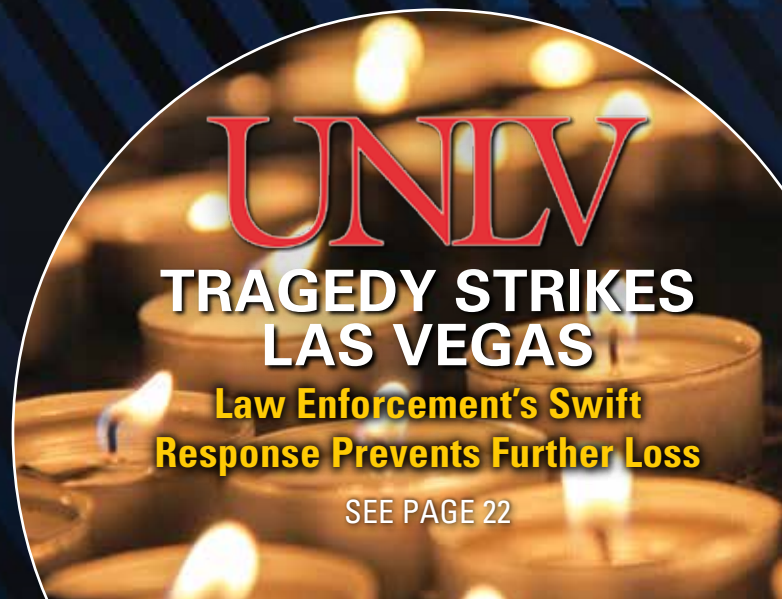
Trooper Alberto Felix

NEVADA DEPARTMENT OF PUBLIC SAFETY —
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Remembering Sergeant Abbate and Trooper Felix

EOW: November 30, 2023

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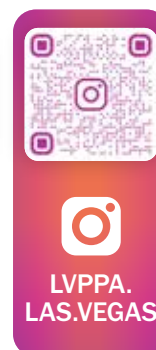
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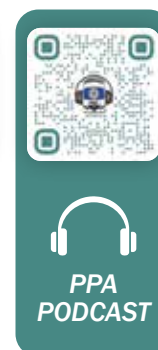
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The Las Vegas Police Protective Association is affiliated with the following organizations at the state and national level:

NAPO – National Association of Police Organizations, representing over 241,000 law enforcement officer members in more than 1,000 police associations nationwide.

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

UCOPS – The United Coalition of Public Safety





President's Message

DETECTIVE STEVE GRAMMAS, PRESIDENT

Officer Retention

I hope this first article of 2024 finds you happy and healthy. Coming off of 2023, it appears our profession will continue to struggle with the retention that it so desperately needs. Toward the end of 2023, several news outlets and media groups were reporting the struggles of law enforcement to retain their commissioned officers. An online media publication reported that "over 2,500 cops have handed in their badges so far this year." These numbers are quite staggering! In NYC, this has caused many officers to work extreme amounts of overtime just to cover their basic police functions.

The Police Executive Research Forum (PERF) conducted a survey of police departments across the country, asking many questions about retention and separation numbers. PERF reported that in 2019, there were 2,838 resignations and 3,043 retirements; 2020 had 2,822 resignations and 3,420 retirements; and 2021 had 3,831 resignations and 3,920 retirements. All three years still showed retirement numbers surpassing voluntary resignations, as would be expected in our profession. We should see more people doing this job long enough to retire as opposed to quitting before retirement. However, in 2022, there were 4,175 resignations and only 3,625 retirements. This is the first time in four years that



Here in our own neck of the woods, at LVMPD, we had approximately 252 separations in 2022.

CONGRATULATIONS

to the contest winners from the last issue!

November/December

Hidden Symbol Contest (\$250)

Garrett Spitzmesser, P# 16513

P# Contest (\$50)

Thomas Fisher, P# 3204

John Brokaw, P# 13120

Jeremy Jacobitz, P# 9383

people quitting our profession surpassed those retiring after their careers. Numbers P# 19868 like these show a stark reality that police officers are, in fact, leaving our profession in greater numbers under a resignation as opposed to a retirement.

Here in our own neck of the woods, at LVMPD, we had approximately 252 separations in 2022. Currently, we have 182 vacancies on the police side and 21 vacancies on the corrections side. As is common practice, when a commissioned officer leaves our agency, the PPA gets the separation notices. We have spoken to many who have between 11–18 years and asked why they were leaving without reaching a higher level of benefit from their retirement. Some reasons were "I don't want to do this job anymore," "I don't think this Department supports us," and "I can make more money in the private sector."

This used to be a job where people could stay for 25–30 years while standing on their heads. Now, people are leaving even before getting close to a 50% benefit in their pension, one of the driving factors in doing a public sector job. I do believe that the last year here at LVMPD has changed some of the thought processes of our officers, and many have shifted into wanting to stay longer, but time will tell. Are we only one more summer of riots or contagious illness away from a mass exodus here at LVMPD and the CLV? I know our Academy numbers, which show that the interest in joining our Department has stayed high, which is a change from years back when we were having graduations of 25–30. Again, time will tell if we here in Las Vegas are any different from a place like New York City or if we will suffer the same fate of diminished numbers and overworked officers.

Have a safe and happy 2024, and as always, the PPA is only a phone call away. Thank you for your membership. Stay safe. **VB**

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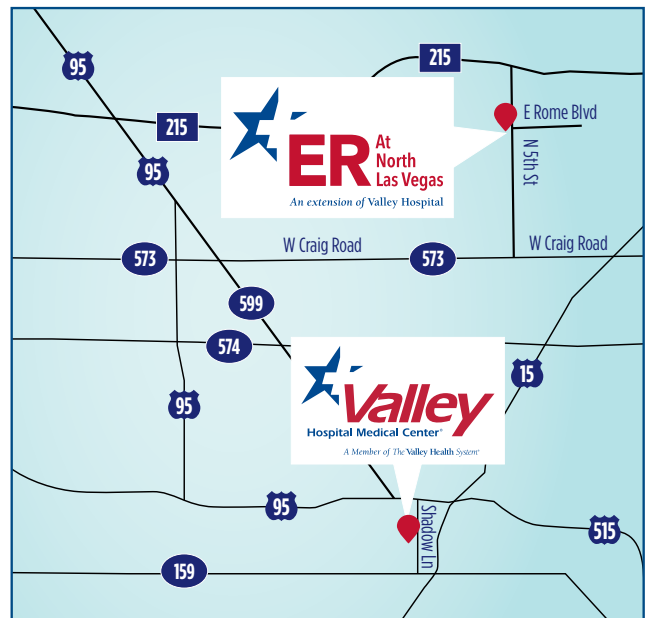
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A Call to Unity and Support During the Holiday Season

CORRECTIONS OFFICER SCOTT NICHOLAS

Vice President

As we approach the holiday season, I wanted to address a topic of utmost importance — the well-being of our officers. As your vice president, it is my responsibility to advocate not only for your professional interests but, more importantly, for your health and happiness.

Law enforcement is a demanding profession that places significant physical and mental strains on each of us. The holiday season, while a time of celebration and joy for many, can be particularly challenging for those in our profession. It is during this time that the importance of looking out for one another becomes paramount.

The issue of mental health in law enforcement is one that cannot be ignored. Recent trends in suicide rates among police officers are alarming, serving as a stark reminder of the toll our profession can take on the individuals who dedicate their lives to serving and protecting our communities.

As we come together to celebrate the holidays with our families, it is essential to be mindful of the well-being of our fellow officers. The stresses of the job, combined with the pressures of the season, can create a perfect storm for those struggling with mental health challenges. We must be each other's keepers,

recognizing the signs of distress and offering support without judgment.

In our close-knit law enforcement community, the concept of being a brother's and sister's keeper is more than just a phrase — it is a commitment to one another's welfare. We understand the unique challenges we face daily, and it is in this understanding that we find strength. By fostering a culture of openness and compassion, we can create an environment where seeking help is not seen as a sign of weakness but as an act of courage.

Addressing mental health concerns is not a sign of vulnerability; it is a testament to our resilience and a commitment to our own longevity in this demanding profession. The LVPPA is actively working to provide resources and support systems to help our members navigate the challenges they may face. Whether it's confidential counseling services, peer support programs or educational initiatives, P# 16127 the LVPPA is here to ensure you have the tools and assistance needed to prioritize your mental well-being.

The stresses of the job, combined with the pressures of the season, can create a perfect storm for those struggling with mental health challenges.

This holiday season, my hope is that you are able to celebrate the joys of the festivities and extend a watchful eye and a helping hand to our colleagues. Take the time to check in on one another, share a conversation and lend an understanding ear. Small gestures can make a significant impact, and it is through our collective efforts that we can create a supportive environment for all.

In closing, I want to emphasize that seeking help is a sign of strength, not weakness. If you or someone you know is struggling, do not hesitate to reach out. We are a family, bound by a shared commitment to service and protection. Let us stand united in looking out for one another's mental well-being, ensuring that every member of the LVPPA feels supported and valued. Wishing you and your loved ones a safe and joyful holiday season. **VB**



CALENDAR

January 15 Martin Luther King Jr. Day

February 14 Valentine's Day

February 19 Presidents Day



*General Membership Meetings are 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.



The Training and Skills You May Be Lacking

POLICE OFFICER BRYAN YANT

Sergeant-at-Arms

As a major law enforcement agency, we are very well-trained compared to other agencies across the country. We are mandated by Nevada POST to receive new training, as well as recertification training annually. On top of that training — whether it be live in-service classroom training, reality-based scenario training, range training or UMLV computer-based training — officers can choose from a wide variety of career-enhancing and career-advancing classes.

As I have traveled throughout the country attending meetings and seminars, I can tell you that, hands down, our agency has some of the best and most training available to officers. The downside to that is far too often, training is canceled for squads for various reasons. This ugly issue has been addressed over and over with captains on up, and it continues to be a problem with squad training days being canceled. If your individual or squad-level training is canceled, please notify us so we can ensure the cancellation meets the criteria established or not. Please see Dan Coyne's article on training days and the discussion with LVMPD staff by visiting tinyurl.com/5n7r7c9m.

When I say you may be lacking in training and skills, I absolutely do not mean our men and women who dedicate their time to the training section are faulty. They work tirelessly, trying to provide the men and women of this agency with the best training they can. They constantly strive to reinvent training scenarios and keep lesson plans fresh so the lessons learned from training translate into blueprints for success in your day-to-day work.

I have written in the past about the importance of articulation and explaining your "why" as it relates to your application of force and justification for force used. Articulation is an area where we see officers struggle. From a simple use-of-force report in Blue Team to report writing and, most importantly, in CIRT interviews, officers struggle with articulation. Far too often, officers use non-elaborate descriptions, such as the subject was "aggressive," "resisted" or "I feared for my life." These terms may all be key words, however, they do not paint a clear picture of the subject's actions. The subject's actions need to be clearly defined by what they did, said and how you felt and perceived their actions. Your articulation should allow the reviewer of facts to close their eyes after reading or hearing your account of the event and see a clearly painted picture.

The area I believe officers may need additional training and practice is in articulation post-realistic scenario-based training and debriefing post-events in the field. This practice provides squads and officers with the ability to articulate applications of force, threat analysis and *Graham v Connor* factors. Squads and individual officers will benefit from the ability to practice articulation after elevated stress and heart rates simulating real-world events in the field, as well as after squad-level responses to high-risk calls for service.

Supervisors, informal leaders and trainers can start focusing efforts on these areas post-training scenarios and events. The training and practice on articulation will drastically help officers while writing Blue Team reports and during IAB and CIRT interviews. Some areas of focus should be:

- **Information sharing:** What information did the officer receive via dispatch, CAD, and other officers either en route or at the scene?
- **Tactical assessment:** What tactics based on the information received

were considered, and what threat assessment/analysis was considered?

- **Pre-planning:** What mental rehearsal, or if with a partner riding double or via the radio, did officers plan and coordinate a response based on the information provided?
- **De-escalation:** What steps, including the pre-planning, did you or other officers take to slow the momentum, gather resources, employ less lethal options, request K-9 and air units, request supervision, etc.?
- **Officers approach/cover and concealment:** How did the officer(s) arrive at the call? Did they arrive properly and safely, and did they use cover and concealment on the approach?
- **Principles of contact and cover:** Did officers use contact and cover methods on the call and while contacting parties involved? Did roles stay consistent through the event or change based on the dynamics of the situation presented, and were the roles established and communicated?
- **Use of force/deadly force:** Ability, opportunity, jeopardy; ability, opportunity imminent jeopardy, preclusion.
- **Threat assessment:** Severity of crime at issue; whether the subject

Your articulation should allow the reviewer of facts to close their eyes after reading or hearing your account of the event and see a clearly painted picture.

poses an immediate threat to officers or others; whether the subject is actively resisting arrest; the influence of drugs, alcohol or mental capacity of the subject; availability of officers or resources to de-escalate the situation; time for an officer to make a decision to use force; the proximity or access to weapons for the subject; and environmental factors influencing the application of force.

- **Decision to use force:** A synopsis of what the officer responded to that led to the decision to use force.
- **Medical response/intervention:** Was medical requested, and what steps, if any, did officers take to provide basic medical care for the subject?
- **Assessment of equipment, firearms, ammunition and qualification:** An administrative review of the above listed items.

Now, if you have ever been through the CIRT process, you will notice these topics are always listed on the notice for both subject and witness officers. If trainers, supervisors and informal leaders implement these topics and practice evaluations during debriefs, individual officers and squads can experience real-life articulation practice under stress and benefit from peer reviews of their articulation skills and build upon the reviews.

As always, we thank you for your membership. If you ever need assistance with training, help with a Blue Team report or anything at all, we are always available 24/7! Please don't hesitate to call us. Thank you. **VB**



Are You Ready?

CORRECTIONS OFFICER MYRON HAMM

Director of Corrections

Almost 24 years ago, the thought of retirement seemed like it was so far away. But fast forward to the present, and it seems like I am attending a retirement ceremony at least once a week. Back when I began, the goal was 25 years, and it seemed like a lot of people were reaching that goal. I fondly remember the officers who retired when I was in my beginning years, and it always seemed like they were sad or having some trepidation about leaving.

I have known people who retire at 15 years but not a day past 20. My son asked me recently why people would leave a job they love if they are still able to function. This question made me think as to why it seems like people are leaving sometimes before they are ready.

The first part of it is the state of policing in this world. When I started this job, it seemed like the respect for law enforcement was astronomical, and officers were looked upon as heroes, leaders and all-around good people. But then, all of a sudden, the pendulum swung on us, and all our decisions and actions were being questioned. The rules were changing, and scrutiny was becoming unbearable, so it stood to reason that people would opt to leave a little earlier than they had planned simply for a little peace of mind.



Managing your time and career is up to each individual member, but have a plan and do your best to stick to it.



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“Like” the Las Vegas Police Protective Association page to stay informed about the events and issues that affect you.

I keep in touch with people from my Academy, and they are living in places now like Montana, Idaho, Tennessee, Texas, North Carolina and Florida, just to name a few. Officers are moving to these places and living in small rural communities because it's peaceful and a nice place to live out your later years. But ask yourself this question: “Are you ready?”

I teach a couple of classes at the Academy, and I always stress the need to be prepared in case of a life-altering event. How many of us could become ill, or a child or spouse becomes ill, and we could still function? What if you came down with an illness and could not work? How long could you be off work before you run out of leave time? There seems to be a trend of the younger generation earning their leave time and using it right away. We earn a total of 104 sick hours per year, so at the end of five years, you have earned 520 hours of sick leave. That means by P# 657 the time you hit 20 years, you will have earned 2,080 hours of sick leave. I advise people to set a number or goal and, barring any unforeseen circumstances, be prepared for the unthinkable.

Managing your time and career is up to each individual member, but have a plan and do your best to stick to it. I remember an officer who was sitting on 23 years before he was diagnosed with cancer. This guy had well over 1,900 sick hours, and he was able to take all the time he needed in his recovery. The trick was when he was healthy, he came to work. I am happy to say that this was over 15 years ago, and he is still with us today. I am imploring you, young people, to use your time wisely and have a plan for any life-altering event that could happen. A wise man once said to me that those who fail to plan will ultimately plan to fail. **VB**



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Critical Labor Shortage Positions

CORRECTIONS OFFICER DANIEL COYNE

Treasurer

In the past, if you were retired or close to retirement and still wanted to work in law enforcement, you had to leave the state because of NVPERS rules, but that is not the case right now.

Recently, there have been multiple police agencies in the state that have been approved to hire critical labor positions. This means they can hire back retired police officers who are currently collecting an NVPERS pension. These officers will be able to continue to receive their pension while collecting a salary for the critical staffing position. The stipulation is that you must be retired for 30 days and collecting a normal NVPERS pension, "not a disability pension."

While working in your critical staffing position, if you choose, you can continue to earn additional PERS credits, and when you leave that position, your pension will be readjusted to reflect the additional service credits you earned up to the 75% max. If you are already at 75%, you will have to work an additional five years to retest, and you will be eligible for a second pension upon leaving the critical staffing position. Most of the positions that are available even have an accelerated starting pay. The

I believe that our officers and community would greatly benefit if the LVMPD followed the rest of the agencies in the state and got serious about our staffing problems.

positions available in Henderson start at \$83,000 a year.

Right now, the agencies that are hiring for these critical labor positions are Henderson Police Department, University Police Department, Nevada

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State Police, and, as of the writing of this article, the Las Vegas City Council has approved critical staffing positions for the Las Vegas Municipal Court Marshalls.

Below is the NRS and PERS language pertaining to critical staffing positions. LVMPD has hired critical staffing positions for retired dispatchers but nothing for commissioned positions. I believe that our officers and community would greatly benefit if the LVMPD followed the rest of the agencies in the state and got serious about our staffing problems. However, I don't see that happening any time soon. So, for now, if you are close to retirement or are currently retired and would like to come back and work a few more years, there are in-state options for you.

Critical labor shortage position. A position determined by a participating public employer's governing body to be experiencing a critical labor shortage pursuant to NRS 286.523.

Reemployment of a retired public employee pursuant to NRS 286.523 is limited to positions of extreme need. An employer who desires to employ a retired public employee to fill a position for which there is a critical labor shortage must make the determination of reemployment based upon appropriate and necessary delivery of services to the public. The critical need designation must be made by the designating authority of the agency in an open meeting. The designated authority shall not P# 1076 designate a position for more than two years. To be redesignated, the designating authority must consider and make new findings in an open public meeting as to whether the position continues to meet the criteria established by law. PERS will compile the forms received from each designating authority and provide a biennial report to the Interim Retirement and Benefits Committee (IRBC) of the Legislature. **VB**



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The Stakes Have Never Been Higher

OFFICER JOHN ABEL

Director of Governmental Affairs

Every election season, I write an article to our members asking for help and begging them to get involved in the election process because I believe citizens will listen to involved cops, especially since crime and public safety are always top issues for voters. The LVPPA and other members of the Public Safety Alliance of Nevada will have an endorsement process where we will vet and pick the best political candidates we believe will support the law enforcement profession. After our endorsement process is complete, instead of asking our members for involvement, I am going to require LVPPA Delegates to get involved in the political process by picking key Assembly and Senate races that we believe are instrumental in saving Governor Lombardo's veto.

Once we identify the political races, LVPPA Delegates are required to bring other officers and walk the district of our endorsed candidate, speaking to citizens about why voting for police-endorsed candidates will help keep them safe.

Right now, Nevada Assembly Democrats hold a supermajority. If the Nevada Senate Democrats achieve supermajority in the Senate and keep

the supermajority in Assembly, they will be able to override the governor's veto, which would be very bad news.

I believe I did an excellent job lobbying on your behalf, but it was nice knowing that the governor had the ability to veto bills that were bad for our profession. The governor's team has identified a number of races in the Assembly that they believe Republicans have the best chances at taking from Democrats, and the governor's team has endorsed candidates that they believe can win in those races and save Governor Lombardo's veto ability.

Saving his veto ability is a priority for me and the LVPPA, and it must be a priority for every law enforcement association in Nevada. Because of what is at stake, I am no longer asking for help — I am requiring it through our delegate program. Walking and knocking on doors in a candidate's district are two of the most effective ways to impact a political race. The LVPPA will help provide the material and voter information needed to be successful.

Through our LVPPA PAC, we are going to also help support our endorsed candidates. Law enforcement officers, active or retired with their families, can get our endorsed candidates elected if we all go out and vote. You will see our endorsed P# 13939 candidate list on our socials, in the magazine, on our website and via email. I implore you to take this endorsement list to the polls with you and give it to your friends and family to use as well.

You can rest assured that anyone on that list has been vetted and asked tough questions about how they will support our profession and the rule of law. I am currently rewriting the candidate questionnaire, where they will be asked if they believe in consequences for breaking the law and how willing they are to vote in favor of laws that benefit law enforcement officers, just to name a few. Our process is not just a rubber stamp. We ask tough questions and hold candidates accountable. I have also met with several promising Republican candidates, who are much more viable than the previous year's candidates, which is promising. I will continue to meet with candidates to discuss what our law enforcement priorities are from now until the election. You can trust that we will do all that we can to ensure only candidates who fully support law enforcement will get our coveted endorsement. If you have questions about the endorsement process or candidates in general, please feel free to email me at jabel@LVPPA.com. **VB**

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RETIREMENTS

8/10/23	Chad J. Betts	P# 6542	PO II	23 years
10/6/23	Douglas E. Seymour	P# 4906	PO II	28 years
10/27/23	Carlos Rangel	P# 6377	CO II	24 years
11/3/23	Jason P. Fletcher	P# 8072	PO II	20 years
11/24/23	Andre K. Bates	P# 6892	PO Sgt.	23 years
11/29/23	James A. Kaku	P# 6397	CO II	24 years
11/30/23	Ronald Quintana	P# 6690	PO II	23 years



We Want Your Feedback

OFFICER GREG STINETT

Secretary

As we near the end of 2023, I want to say thank you to all our members, especially those pushing sleds, working the decks of our jails and serving in the courts. We currently have a membership rate of 94%! We will continue to provide the best service possible to our members in 2024.

For the last several officer-involved shooting callouts, we have had our full team and an attorney on scene within an hour of when our involved officers pulled the trigger.


Within the next month, we will push out a survey to our membership. This survey will be somewhat lengthy. Having said that, we are asking you to grade us, the Executive Board of the LVPPA. Your feedback is critical.



I wanted to take this opportunity to introduce two new LVPPA patches that were recently created. There were many design variations, but ultimately, we settled on these versions. The patch with the green background will now be placed on all our retirement plaques for presentation to our members.

These patches are for sale at the office. The price is three for \$10 or one for \$5. They will also be available at the check-in table at our future events. If you are a retired member and reside out of state, please contact me or the office staff, and we will facilitate the order over the phone and get them mailed out to you.

Have a Merry Christmas and a great holiday season. We will be on the strip and downtown for New Year's Eve. As always, we are a phone call away if there is anything you need. **VB**








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Addressing Body-Worn Cameras

ROBERT GLOWINSKI

Director

Greetings! I hope this finds you well. If you pay attention to the context of our articles, you'll notice some repetition. Although we don't necessarily plan it this way, it should be a clue that certain topics may be important if they keep making it to print. Typically, our articles are written based on our recent experiences. Sometimes, it's through IAB investigations, phone calls received from our members or the facts surrounding a critical incident. The topic of this issue is the body-worn camera — specifically addressing the difference between what you see and what the BWC captures.

The LVMPD currently uses BWC's from Axon, formerly Taser. The cameras were implemented around 2016 and are mandatory for officers who regularly interact with the public (NRS 289.830). Since their introduction, the LVMPD has amended the policy on numerous occasions. The most recent edition effectively ensures the BWC will almost always be activated. There are exceptions, but not many. Essentially, your BWC must be activated from the time you are dispatched to a call until you conclude the call or citizen contact. Depending on the circumstances, all the footage may be reviewed, critiqued and potentially used in the disciplinary process.

Essentially, your BWC must be activated from the time you are dispatched to a call until you conclude the call or citizen contact.

Let's begin with the activation itself. LVMPD policy 5/210.01, Section 1 "Activation" states: *Officers will activate the BWC as soon as they are assigned a call via radio or MDT, or at the onset of self-initiated activity once safe to do so.* If you do not comply with the policy, you open yourself up to discipline.

Once a supervisor or investigator has a reason to review your video, they may watch it in its entirety. For instance, if a supervisor is investigating an application of force for a Blue Team, they are not relegated to only watch the use-of-force portion. They are allowed to watch the video from the moment you activate your BWC. Even if your use of force is within LVMPD policy, your supervisor can open an SOC if they observe you speeding, talking on the phone while you are driving or using profane language during the call. The hypothetical examples are never ending. However, remember that everything recorded may be viewed by a supervisor or investigator later. Keep it professional as best possible.

Now that we know the agency is watching, what exactly are they watching? Well, they are watching what your camera records. That may seem like the obvious answer, however, what you see and what the camera records are not necessarily the same thing. The BWC has a field of view of about 140 degrees,



records in high definition, compensates for low light and misrepresents distance due to a fisheye lens. Your field of view, including your peripheral vision, is less and is in the single digits when you consider where you are focusing your attention. While the viewer could see "the big picture," they may not see *your* picture. You may have been focused on a single person, item or area. As a result, the viewer will observe details you didn't but may assume you both viewed the event identically. It's an unfair assumption to make, especially when you consider most videos viewed in hindsight are done so from the comfort of an office.

Additionally, whoever examines the video already knows the outcome or has an idea of what occurs. They don't have the ability to watch the video with the same uncertainty you had while assigned to the call. Although you may have thoroughly documented the event in Blue Team or in an arrest report, the viewers are in a safe and secure location. It is unlikely they can replicate the environmental factors, your selective attention or how you are processing the information you are receiving from dispatch, citizens, suspects or your own observations. Despite this, your supervisor will hold you to the standard they believe is appropriate while reviewing your video well after the event. They will also identify every mistake and policy violation they observe. They will have the opportunity to stop the video, rewind it and replay it as much as necessary to document their observations.


In closing, someone's always watching. You may not think that's the case, but all it takes is a single action to trigger a reason for your video to be reviewed. Even though the LVMPD doesn't currently utilize the feature, Axon does have software available that would enable dispatch or your supervisor to watch your BWC in real time. It's been my experience that what makes most people angry is all the ancillary and tertiary complaints that arise from reviewing video. When you have a legitimate use of force and you catch discipline for speeding or some petty interaction complaint, it's frustrating. However, that's our fight to make. We are currently in the grievance process with the LVMPD over what we believe is an inappropriate review of BWC footage by a supervisor. Don't let this deter you from handling your business, but be mindful that almost everything you do and say is being recorded and is available to be used by the Department. As always, stay safe and trust your training. **VB**

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

This issue contains **TWO** ways to win your share of **\$500 CASH**



Giveaway #1: One **\$250** prize

Members who find the hidden  in this issue of Vegas Beat and register through www.LVPPA.com will be entered into a drawing for \$250. You must enter by Monday, February 5, 2024, to be considered eligible. Telephone entries will not be accepted. Visit our website for more details.

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

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 the Retirement section of Vegas Beat

Cash is great, but our giveaways aren't the only reasons to read Vegas Beat.

Each issue gives you the latest information on

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DAVID ROGER
General Counsel

Difficult Domestic Violence Decisions

Officers frequently complain that their supervisors order them to make arrests in domestic violence calls when officers are uncertain whether probable cause exists. This article will address some of the associated issues.

First, I appreciate the difficult job you do to protect our community. I know that you are pulled in different directions and frequently have to make difficult judgment calls. This is especially true in domestic violence cases. My role as your lawyer is to keep you legally safe. Whether the Department looks good is not my concern. Here is my analysis of some of the issues.

Probable Cause Arrests

Probable cause can be a difficult standard to apply to DV cases. That is because factual circumstances may lead to different results. LVMPD policy 6/006.01 explains, "Probable cause exists when the facts and circumstances known to the officer would warrant a prudent person in believing a crime had been committed and that the accused had committed it."

With respect to DV calls, officers may disagree whether a victim's statement, standing alone, is sufficient to establish probable cause. Depending on all the circumstances, it may be reasonable to conclude that PC does not exist. That said, as will be discussed below, you will likely be granted qualified immunity if you make an arrest in close calls.

Prosecutorial Discretion

Often, officers wonder whether it is worth arresting a citizen when prosecutors may either deny the case or negotiate the case to a reduced charge. LVMPD policy 6/016.00(4)(a) states that you must evaluate probable cause "Regardless if the officer believes the offense may be ultimately prosecuted. The decision to prosecute rests with the prosecuting agency, not with the victim or the officer."

Thus, if you believe probable cause exists, you should make an arrest without regard to whether you believe the DA will prosecute the case. The reason for this is that LVMPD wants officers to err on the side of separating the parties to avoid a bad outcome after police leave the residence. Additionally, it is impossible to predict how a particular prosecutor may view the evidence.

Qualified Immunity

In the back of every officer's mind is whether they will get sued for making a wrongful arrest. Today, the big issue is whether officers will be granted qualified immunity.



With respect to DV calls, officers may disagree whether a victim's statement, standing alone, is sufficient to establish probable cause.

Courts have refused to grant qualified immunity when officers violate "clearly established law." The courts give the benefit of the doubt to officers when the law is not clearly established. The reasoning is that if lawmakers and courts are not clear, officers should not be required to guess how a reviewing court will rule on an issue. With respect to civil

rights lawsuits for wrongful arrest, the courts recognize the facts of any case will vary, and there are rarely clearly established laws when it comes to evaluating probable cause.

The U.S. Supreme Court in *District of Columbia v. Wesby* explained, “To determine whether an officer had probable cause for an arrest, we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. Because probable cause deals with probabilities and depends on the totality of the circumstances, it is a fluid concept that is not readily, or even usefully, reduced to a neat set of legal rules. It requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. Probable cause is not a high bar.”

In applying the *Wesby* case, the Ninth Circuit Court of Appeals, in *O’Doan v. Sanford*, stated, “Because of the imprecise nature of the probable cause standard, officers will often find it difficult to know how the general standard of probable cause applies in the precise situation encountered. Thus, while there does not have to be a case directly on point to deny qualified immunity, existing precedent must place the lawfulness of the particular arrest beyond debate.”

Thus, the facts must clearly establish that an officer was obviously wrong in determining that probable cause existed before a court will refuse to grant qualified immunity to an officer. This is a very difficult standard for a citizen to prove. A victim’s statement alone may very well meet the minimal threshold of probable cause.

Challenging Unlawful Orders

If a supervisor demands that you arrest a party, despite your reservations about the strength of your probable cause, you will have to decide whether to make the arrest or challenge your supervisor’s order. LVMPD 4/104.02 provides:

No commanding or supervisory personnel shall knowingly and willfully issue any order which is in violation of any law or ordinance or department rule.

No member is required to obey any order which is contrary to the laws of the United States, the State of Nevada, or the ordinances of the County of Clark or the City of Las Vegas.

Refusal to obey an order is the member’s responsibility, and he shall be strictly required to justify his action. Obedience to an unlawful or improper order is never a defense for an unlawful or improper action.

Members may appeal for relief from orders or instructions which are unlawful. Such appeals must be made in writing to higher authority through proper channels. Irresponsible or capricious appeals will be considered as serious misconduct.

Any member who is given an unlawful or improper order shall, at the first opportunity, report in writing the full facts of the incident, together with his own action, to the division/office commander through official channels.

The proper channels shall mean that the written appeal or report will be delivered to the member’s immediate superior. Then, such letter shall follow the chain of command.

While you are not required to make an unlawful arrest, you must make a judgment call as to whether it is worth the drama to fight a supervisor over a misdemeanor arrest. As discussed above, a victim’s statement may be sufficient to establish PC, regardless of whether you believe the case will be prosecuted. Moreover, such evidence may likely be enough to convince a judge to give you qualified immunity.

If you feel strongly against making an arrest, you may consider making your case to your sergeant and to your lieutenant or watch commander. In the event that you are not able to convince your supervisors, you may consider stating in your TCR, “Based upon the facts and circumstances, Sgt. [name] concluded probable cause exists and ordered me to make this arrest.” Doing so will not protect you from civil liability if a court agrees you did not have PC, but it may convince your supervisor to recognize your concerns in the future. **VB**

EDITORIAL POLICY

1. Opinions expressed in *LVPPA Vegas Beat* are not 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.



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IN MEMORIAM



Sergeant Michael Abbate

NEVADA DEPARTMENT OF PUBLIC SAFETY — HIGHWAY PATROL DIVISION

EOW: November 30, 2023

Remembering Sergeant Abbate and Trooper Felix

The Nevada Highway Patrol recently announced with deep sorrow the loss of two state troopers in the line of duty on November 30, 2023.

Sergeant Michael Abbate, badge #304, joined the Department in December 2013 and was recently promoted to sergeant in November 2023.

Trooper Alberto Felix, badge #502, became a part of the Department in January 2019. Prior to his service with the Highway Patrol, Trooper Felix honorably served in the United States Air Force.

Both Sergeant Abbate and Trooper Felix dedicated their careers to serving the state of Nevada with exceptional commitment and pride. LVPPA extends its heartfelt condolences to the families, friends and colleagues of our fallen heroes. **VB**

IN MEMORIAM



Trooper Alberto Felix

NEVADA DEPARTMENT OF PUBLIC SAFETY — HIGHWAY PATROL DIVISION

EOW: November 30, 2023



LVMPD

On December 6, a vigil took place outside Allegiant Stadium to honor our fallen heroes and pay respect to their families.

Three Gifts During the Holiday Season



CHAD LYMAN
Director

During this Christmas season, many people revere the story of the birth of Jesus Christ and make it a part of celebrating during this season. Whether you have a personal testimony in Christ as your Savior, different religious beliefs, or are non-religious, there are parts of this story and season that are universal.

An important part of the story of Christ's birth is the Three Wise Men bringing precious gifts to honor the Savior's birth. In honor of the three gifts, my article will focus on three keys to better

preparation and results throughout your LEO career.

Gift No. 1: The Gift of Consistency

Math wins the day ... C over T equals Results. One formula is "consistency over time equals results." This is either the best formula in the world or the worst formula in the world. The reason is you always get a result. There is no "not getting a result." If you don't train the result, you are not proficient. If you train "nonsense" (practice makes permanent, not perfect), you are great at "nonsense" and still not proficient.

If you train on a consistent basis, over time, the result is you get better. I learned this incredible formula from my close friend and first real MMA/Combatives coach, the late Robert Follis. I have been consistently applying this formula in my personal training for almost 20 years now. The great thing about this formula is it can be applied everywhere in your life. In your marriage, as a father, your health, your diet, professionally at work, in your faith, etc. What you do consistently over time gives you a result. And you are probably getting the result you deserve, so apply yourself. The

great thing is, if you buy into this formula and actually apply it, I believe that, ultimately, you will be successful because you always get a result. So remember, C over T equals R, and then go apply it. I have taught this formula to my kids, and I hope they use it throughout their lives.

Despite the C over T equals R application, time is still an issue. I get caught up in life, and time gets away from me, and despite my best intentions, days can turn into weeks, which can turn into months, and suddenly, we are not training at all.

Gift No. 2: The Rule of Three

This is not really a rule — just an observation that I have made a personal rule. It is also not a scientific truth, just some general thoughts. If I can't get any air in my lungs for more than three minutes, I will probably pass out and die. If I lose more than three pints of blood, I will probably die. If I end up in the desert in the summer with no shelter or water, I am going to die. I apply the rule of three to training by saying if it has been more than three days since I last trained, I am dying. Every time I train, the time resets, and I must train within three days, or I am dying. Working out with weights or cardio is strength and conditioning, not truly training. Your fitness and strength are very important, but make no mistake, you can only become "fit" for combat by fighting. I only reset my "rule of three" clock when I do some combative training. Strength and conditioning are necessary, and I train it every week, but if you are not fighting, you are not training.

It is also important to remember that adults learn in three ways — auditory, visual and kinesthetic. If you are going to be successful in combat, you have to make sure most of your training actually involves physically fighting. However, I can't always get to the gym, so there are times I train by watching relevant video clips or reading an article on how to fight successfully. If my three-day window is closing, I might reset it by utilizing other methods, but the main element of getting better at combatives is to do combatives.

Applying C over T equals R and the rule of three creates a lifestyle where I train a little a lot versus training a lot a little. The academy setting would be

a lot a little. A course with a certification where you train for four days straight is training a lot a little. These training sessions can be valuable to set a foundation or to jumpstart/reenergize us to train more. If we partake of these experiences and then don't train, we don't build on these foundations. If I could train twice a year for 40 hours at a time, or I could train for a half hour four times a week, what would be better? Training a little a lot, several times a week, would be far better than occasionally training in large chunks. Regular training leads to growth and retention. The 30 minutes is not optional; it is just a number I picked. At times, I train longer, and at times, I train for half an hour. It depends on my schedule and what is going on in my life at the time. What I do consistently over and over is apply C over T equals R, and I train utilizing the rule-of-three methodology to be sure I train a little a lot. Remember, this is a marathon, not a sprint, and you are only in a race with yourself.

Gift No. 3: The Agency to Choose Your Hard

Life is hard. Choose your hard. This is a concept I have believed in, promoted and lived by for most of my adult life.

Growing up, I have been taught a couple of core principles at home and through my faith on a consistent business. One principle is that I have been granted agency and the right to choose by my God. I was taught that this is a precious gift given to me by my Father in Heaven so that I could act and not be acted upon. Another is that anything that is hard for me is for my own good and growth.

Life is hard.

Choose your hard. This is

a concept I have believed

in, promoted and lived by

for most of my adult life.

Another aspect of hard things being good for me was that my parents taught me that I was to "bear it well" and that I would experience blessings, growth and, ultimately, happiness as I came through the hardship. I was willing and committed to work through challenges, but I felt this was probably a "grin-and-bear-it" scenario. I thought I didn't even know if this would ever lead to happiness, but at least I could choose to work through it, so that was still better than letting whatever the problem was crush me. I didn't realize the hidden symbiotic relationship between exercising agency and hard things. That relationship has revealed itself over time, and as I have matured, I have made the connection between hard things happening to me, and that my actual growth and happiness depends on going through these experiences.



One of my church leaders once said, "If you were to treat everyone as though they are fighting and trying to win an internal battle you know nothing about, most of the time, you would be right." The key here is, "If you are facing challenges, how do I help you?" An even bigger question is, "How do you help yourself?"

Ultimately, it leads to enduring to the end. Not hanging in there ... recognizing and accepting hardships, and having happiness and growth, not sorrow. Life is hard, but it is for your own good. Once you *know* that, see it and believe it — and you accept that you have been given the gift of *choice* — then you know, you really know, you are simply choosing your own hard, to your own benefit. While *life is* hard, you can choose how, why and what that will mean for you. At the end of the day, choose your hard.

Being fit is hard ... being obese is hard ... choose your hard.

Being married is hard work being divorced is hard ... choose your hard.

Not being complacent or routine as a cop is hard ... being complacent and then being attacked is hard ... choose your hard.

Being financially disciplined is hard ... being broke is hard ... choose your hard.

Being a police officer with PTSD and asking for/accepting help is hard ... having PTSD and not getting help is hard ... choose your hard.

Finding time/money/motivation to train as a cop is hard ... getting into a physical fight at work with no training is hard ... choose your hard.

Accepting that hard is good and choosing your hard is hard ... thinking life is easy or should be easy, and then experiencing hard is hard ... choose your hard.

I hope these three gifts can serve you as they have served me, no matter what your personal beliefs are. Just like the wise men who brought gifts to my Savior, finding wise formulas to live by can bring blessings into your life that are very precious long term for your growth and happiness. May we use this holiday time to serve others and access ourselves, and do what is required for personal happiness and growth. Nothing grows without opposition. Embrace the challenge and use it to make yourself and others better. **VB**



LVPPA President Steve Grammas updates members about the UNLV tragedy in a video posted to Facebook



Heartbreak at UNLV

Law Enforcement's Courage Amid Tragedy

On December 6, the unthinkable happened at the University of Nevada, Las Vegas, when a gunman opened fire on the campus, killing three people and wounding a fourth before being shot dead by police.

Sheriff Kevin McMahon said at a press conference that the first 9-1-1 calls were placed at 11:45 a.m., adding that two police officers were treated for minor injuries from searching campus rooms and buildings.

After opening fire, the gunman went to several other floors of UNLV's Lee Business School before he was killed in a shootout with two university police detectives outside the building, which is next to the university's student union.

Crucially, McMahon said there could have been many more lives taken without the actions of the brave officers who initially responded.

UNLV student Ryan Allison was getting ready to leave work for the day in a building on campus shortly before the tragedy.

"I opened the door — that's when I just heard shots," Allison told NBC News. "I just did what everybody else did, just tried to hide to safety," he said.

In a letter to students and staff, university President Keith E. Whitfield said that the shooting "was the most difficult day in the history of our university." He identified two of the victims who were killed as business school professors Patricia Navarro-Velez and Cha Jan "Jerry" Chang.

LVPPA President Steve Grammas provided an update on scene shortly after the shooting.

"The gunman is the absolute scum of the earth who took it upon himself to attack young people going to school who just wanted to learn and become better at a place they should feel safe at," Grammas said. "Thanks to a quick response from law enforcement — from your police officers — the suspect is no longer walking on the face of this earth. Our hearts go out to the families of the victims and everyone touched by this tragedy." **VB**



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