

INTERSECTIONS:
Traffic Safety
Committee

Lindsay Tomidy
Monroe County
Dept. of Public Safety

FOCUS ON TRAINING:
Human
Performance-Based
Recommendations

James Nightingale, M.S

GORDON GRAHAM:
Curiosity Is Essential
for Risk Management

COUNSEL'S CORNER:
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June 2023 • The New York Chief's Chronicle

FROM THE PRESIDENT

Chief Kevin Sylvester
OSSINING POLICE DEPT.



The NYSACOP Conference Where the Chiefs of Tomorrow Can Build Their Professional Network

While much of our news cycle continues to highlight community challenges and it often feels like we're bombarded with bad news, I find the summer months always bring a sense of hope and inspiration. Perhaps it's the longer days or warmer evenings, but each year as the school year winds down and vacations approach I am reminded of the value our agencies bring to our neighbors and the importance of great policing. I choose to focus on the good news and highlight the success. There is so much happening in law enforcement. There's reason to be proud.

Last month we honored the fallen during Police Week. Across the state, solemn memorials were attended so that we'll always remember the sacrifice of the brave officers who came before us. I was fortunate to represent the Association at the New York State Police Officers Memorial Ceremony. Through the sadness of adding names to the Memorial Wall, the love and support was palpable

with the families of the fallen in the middle of the courtyard, surrounded by hundreds of uniforms from near and far. It's important that we recognize their sacrifice and I was honored to join the crowd to let them know they will never be forgotten.

During Police Week we also heard stories of heroism, courage, and honor through exempla-



ry service from police officers around New York State. In every region, police chiefs proudly shared stories of police officers going the extra mile, risking their own wellbeing, or otherwise going above and beyond to ensure the safety of those around them. I was proud to issue awards within my own agency for noteworthy arrests and for efforts that

continued to build community.

My favorite award story for this year comes from Westchester County where a scholarship fund was established in honor of Chief Joseph DelBianco (Ret.). As most of you know Chief DelBianco was a lifetime member, board member, and supporter of the New York State Association of Chiefs of Police. With his passing, the Westchester Chiefs created a scholarship that would support students in his hometown who will pursue a career in law enforcement. This year's recipients Rye Neck High School graduates Alexis Friedman and Olivia Tobman.

Looking forward, I'm excited for our quickly approaching Annual Conference. With each year we've improved upon the last and this year's schedule will live up to expectations. I encourage every one of our members to not only get registered, but to bring a member of your command staff. Our responsibility is to manage staff but also to develop

the leaders of tomorrow. There is no better place to begin that journey than the NYSACOP conference where the chiefs of tomorrow can build their

professional network, attend top quality training, and learn about emerging technology that can benefit their departments.

As we enter the summer months, I encourage you – focus on the good. There is so much to believe in and the greater our challenges to recruit and retain officers, the more important it becomes that we focus on motivation through positive reinforcement. Keep your eye on the prize, remember why you're here, and always stay safe!



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use their department
email and
mailing addresses.**

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our communications,
publications and other
useful opportunities.**





FROM THE EXECUTIVE DIRECTOR

Chief/Ret. Patrick Phelan

What's in the Budget

Below is a brief summary of relevant law enforcement legislation passed in the budget. It did not contain any reforms to the discovery laws. It did address the following topics:

1. Bail:

Judges will no longer need to consider the least restrictive alternative when setting bail or pre-trial conditions. They will instead need to consider the “degree and kind of control or restriction necessary to reasonably assure the principal’s return to court.” Additionally, when the defendant is out on certain cases and gets rearrested, a judge can consider the “kind and degree of control or restriction necessary to reasonably assure the principal’s return to court and compliance with court conditions.” The law also authorizes judges to set a combination of bail and non-monetary conditions where bail is otherwise authorized. Additionally, the presumption of release on recognizance for bail-qualifying offenses has been removed. Finally, in certain situations, the court can now impose a securing order that doesn’t just account for the defendant’s return to court, but also accounts for ensuring that the defendant will comply with court ordered conditions.

2. Cannabis:

a. Creates an A misdemeanor for any person who sells cannabis while operating a business where cannabis is sold without a license.

b. Amends the tax law to give the commissioner of the NYS Department of Taxation and Finance the power to revoke a certificate of registration in certain instances such as when the seller fails to collect taxes or has been convicted of a crime in the past year.

c. Allows for the Office of Cannabis Management (“OCM”) and authorized representatives to inspect during normal business hours any place of business or vehicle where adult-use cannabis products are being distributed, placed, stored, sold or offered for sale. This does not include a residence or personal use vehicle.

d. Authorizes OCM or the Attorney General to bring a civil proceeding enjoining unlicensed activity being conducted or permitted in a building or premises occupied as a place of business where the unlicensed activity presents a danger to the public health, safety and welfare.

e. Creates new civil penalties that are enforced by state entities:

i. Possession for sale of more than 5 pounds but less than 12 pounds of illicit cannabis or more than 1 pound but less than 4 pounds of illicit concentrated cannabis or edibles may be liable for a civil penalty of up to \$25,000 for the first violation and up to \$50,000 for a subsequent violation within three years



of first violation.

ii. Possession for sale of more than 12 pounds of illicit cannabis or 4 or more pounds of illicit concentrated cannabis or edibles may be liable for a civil penalty of up to \$75,000 for the first violation and up to \$100,000 for a subsequent violation within 3 years of the first violation.

3. Firearms:

Makes the following substantive changes to who may carry a firearm in a sensitive location:

- a. Persons responsible for security at a house of worship while at the house of worship;
- b. MTA employees who carry as part of their duty, while on duty;
- c. Historical reenactors and persons engaged in a motion picture and theatrical production
- d. Persons acting within their official duties using antique firearms at a museum or historical site;
- e. Persons participating in a military ceremony, funeral or honor guard; and
- f. Persons learning, practicing or training for or competing in a biathlon.

4. Allows MTA employees who carry a firearm as part of their duties, to carry said firearm in restricted locations.

5. Exempts police officers and military personnel from the requirement to safely store a firearm when acting in the course of their duties and employment and complying with applicable safety standards at that time.

6. Amends the DAT law so that DV cases are specifically exempted from being issued DATs.

7. Allows members of the NYC Police Pension Fund Tier 3 members of the Police Pension, with at least one year of active service to borrow no more than 75% of total contributions made within a year.

8. Permits DOT to create an automated enforcement program for individuals who are parked in a bike lane, bus lane, bus stop or who are double parked. Informa-

tion from this system can only be obtained via warrant or judicial subpoena.

9. Makes more fentanyl analogs schedule I controlled substances.

10. Makes it unlawful for any person to establish a geofence or similar virtual boundary around a health care facility for the purpose of delivering a digital advertisement to a user in or at the facility.

11. Prohibits law enforcement agencies or officers from purchasing or obtaining electronic health information without a warrant.

12. Prohibits honoring a warrant from another state to

produce records that reveal the identity of any person who uses reproductive health services unless the warrant includes an attestation that the records are not being used to investigate a violation of that state's laws.

13. Establishes the "Daniel's Law Task Force" to support trauma-informed, community and public health-based crisis response and diversion for anyone in the state experiencing a mental health,

alcohol use, or substance use crisis

14. Extends the testing under the direction of New York State Police of autonomous vehicle technology on public highways until April 1, 2024.

15. Prohibits the installation of fossil-fuel equipment and building systems in any new building not more than seven stories on or after December 31, 2025 and in all new buildings after December 31, 2028.

16. Increases the MTA payroll tax for employers in the city.

Civil Service

Previously there could be continuing eligible lists for positions where there were inadequate numbers of well qualified persons available for recruitment. Now, continuing eligible lists for positions can be established where appropriate as long as it is filed through open competitive examination.



CHIEF'S CORNER

Police at Highest Risk For Suicide of Any Profession

By Chief Stuart K. Cameron - Old Westbury PD



Many police chiefs invest a great deal of time in an effort to keep their sworn personnel safe. These efforts likely include researching the purchase of obvious safety related items, such as body armor, weapons systems, emergency lighting, and patrol vehicles to ensure that their officers have the very best equipment available to protect them from the myriad of hazards that they face while out on patrol. Police chiefs are also involved in establishing the training curricula for their personnel and in developing the policies and procedures that they operate under, all no doubt with a keen eye towards officer safety. Protecting officers from hostile attacks and injuries from automobile accidents are likely on the forefront of every chief's mind while these decisions are made. Some police chiefs unfortunately may not be fully aware of the ever-present threat posed by law enforcement related suicide, a more subtle and less obvious danger, however one that is no less perilous to police officers' lives. In fact, a recent study has found that police officers are at higher risk of suicide than any other profession and only about five percent of police departments nationwide have suicide prevention training programs.

Law enforcement suicide is a growing concern in the United States and the topic is starting to gain more attention than in the past. According to Blue H.E.L.P., a nonprofit organization that has been collecting law enforcement suicide information since 2016, in the year 2019 alone 239 police officers committed suicide, which is well more than the number of officers who

were killed in the line of duty. This alarming statistic highlights that action needs to be taken to reduce the risks associated with law enforcement suicides. Suicide ranked 10th for an overall cause of death for individuals in the United States in 2019 and law enforcement officers are at an increased risk of suicide as compared to members of the general public.

Law enforcement is a noble profession that requires tremendous commitment, dedication and sacrifice from those who choose this occupation. It can also be a very high-stress profession that over the course of a career can lead to various mental health related issues, such as, depression, anxiety, and PTSD. Suicide is a serious concern among law enforcement officers, so it is crucial to understand its causes in order to prevent it. Suicide prevention should begin even before law enforcement officers are hired, during pre-employment screening, and continue throughout an officer's career with various in-service programs designed to prevent law enforcement suicides.

As with any issue in law enforcement, clearly defining the problem is usually the most prudent first step. For many years the Federal Bureau of Investigation has been a go-to source for criminal justice data, in fact the FBI began collecting law enforcement related data back in 1930 and has continually expanded and adapted what they collect. FBI collected data is frequently used and studied by researchers to better understand crime trends in society with an eye toward crime reduction.



In 1937 the FBI began collecting statistics about line-of-duty deaths of law enforcement officers and publishing these statistics in the annual Uniform Crime Reporting publication, Crime in the United States. Once again, this data collection effort expanded over time to include details on assaults and accidental deaths of law enforcement officers. This data is now included in the FBI's Law Enforcement Officers Killed and Assaulted (LEKOA) data collection effort.

Notably however, despite all of the data historically collected about law enforcement and crime, there has never been a national collection effort to compile information on law enforcement related suicides, notwithstanding the serious danger that suicide poses to police officer's lives. The 239 police officers who committed suicide in 2019 resulted in the death of almost four times the number of officers

as compared to those who died by felonious assault or by accident, which was 89 in 2019, as reported in the LEKOA statistics. Some nonprofit organizations, such as Blue H.E.L.P., the Police Executive Research Forum and the IACP have all endeavored to compile information on police suicides to provide a basis to develop viable solutions to this vexing issue.

In 2020 the U.S. government voted to create a national database for law enforcement suicide data. The objective of this new data collection effort is to help agencies to better understand and prevent law enforcement related suicides. As in the past the FBI was tasked with collecting this information through the existing Uniform Crime Reporting mechanism. Once compiled this data will be available online on the FBI's Crime Data Reporter website.

There are likely a wide range of factors that contribute to the high number of law enforcement officers who commit suicide. Included among these factors are challenges posed by shift work, irregular schedules, fatigue, poor diet, lack of opportunity for exercise, working alone for long periods of time, constant exposure

to traumatic incidents and ready access to a firearm. Many departments are experiencing severe staffing shortages, which only compound these problems, as officers are expected to work more and longer days, while the demands upon their time is ever increasing, in contrast to perceived public support, which is deemed to be lacking.

Throughout their careers law enforcement officers are exposed to a steady stream of traumatic events, which over time can eventually cause mental health issues, if they aren't properly addressed. As part of their jobs police officers are often the first on the scene to the most dangerous and challenging situations one can imagine. Not only do police officer routinely face

Support Hotlines

Suicide Prevention Hotline: 1-800-273-8255

Crisis Text Line Text 741741

Substance Abuse Helpline 1-800-662-HELP

Law Enforcement Medical Programs

COPLINE: Officer Life Line Hotline: 1-800-COPLINE

Law Enforcement Employee Assistance Program Toll-free: 1-800-222-0364



threats of physical harm, they regularly witness disturbing and very tragic events that often exemplify the worst of human behavior. Research has shown that the average police officer will be witness to 188 critical incidents during their careers. The career long effect of this exposure can lead to multiple mental health related issues, which often are not treated properly. Rates of PTSD and depression among police officers are five times higher than in the civilian population.

Even when police officers perform their jobs precisely as they have been trained, serious lasting and troubling concerns can linger, often destroying otherwise exemplary careers. For example, police officers who have responded to active shooter calls and have by-passed wounded victims to continue forward toward the active threat posed by the attacker, only to return later to find these victims have passed away; or police officers who have had to discharge their firearms to defend themselves or others from imminent deadly force, thereby causing injury or death to another. These types of situations can have devastating effects on the officers involved, and without proper treatment these incidents can end otherwise promising careers or worse result in a police officer suicide. Most officers join law en-

forcement to help people and harming others is so abhorrent, they are simply unable to process it without proper help.

Police leaders must recognize these factors and put systems in place to intervene before these mental health related issues can lead to suicide. Officer wellness must be prioritized and join other officer safety related topics on the minds of all law enforcement leaders.

For many in law enforcement seeking help with mental health issues would be tantamount to admitting weakness, or an inability to cope, something that has historically been taboo within the policing profession, where strength and toughness have been revered. That environment needs to change. Focusing a light on the issue of police suicide to acknowledge it is a significant problem is just the first step in that process.

Seeking help for mental health issues needs to be destigmatized and a supportive environment established to encourage police officers who are struggling to come forward to seek the help that they need. Many officers feel that seeking help for job related mental health issues will damage their careers, potentially result in reassignment or the loss of their firearms. Rather than come forward to seek help some officers opt to self-medicate to help alleviate their pain, turning to alcohol or drugs, further exacerbating the problem. One limited study found that 72% of the victims of completed police officer suicides had alcohol in their systems during post mortem examinations.

Training police officers and supervisors to recognize risk factors for suicide among their coworkers is important, as is developing a robust and comprehensive support program for those seeking help. The Center for Disease Control identified some risk factors closely associated with law enforcement suicide, these include PTSD, alcohol and/or substance abuse, access to lethal

means, job problems and intimate partner problems. The relationship between suicide and problems on the job was especially strong for law enforcement officers. Stressors unique to the law enforcement profession were also linked to increasing suicide risk. These stressors include the danger of the profession, constant exposure to traumatic events, exposure to suicide, shift work, social isolation, and financial, relationship and legal problems.

Establishing a comprehensive set of resources to assist officers who wish to seek help is a key component in addressing this issue. These resources can include peer teams, police chaplains, employee as-

sistance programs, and referrals outside the department, such as counseling services or hotlines. Every officer is different and a resource that may work for one officer may not be suitable for another, so having a diverse portfolio of options has value. Officers also need to

be made aware of where they can seek help, should they desire to do so, and know that if they do seek help, it will be kept confidential.

Many officers may feel that it is difficult to explain issues that are unique to the law enforcement environment unless the person that is helping them has experienced these issues firsthand, this may make a peer team member an excellent choice for someone with this mindset. Peer teams can be formed by the department or be sponsored by unions, but either way members must be carefully selected and properly trained, therefore support from the highest levels within the department are essential. A vital part of peer team training is recognizing and properly responding to the signs that someone may be suicidal. Peer team training must be conducted by trained professionals using evidence base methods and it must be an ongoing process to achieve success. Having peer team members that occupy a variety of roles in the department, as well as numerous rank levels, can help to maximize the peer team's effectiveness and widespread engagement. Peer team



members should proactively respond out to appropriate crisis situations that may traumatize responding officers, and schedule group or individual debriefing sessions after these types of stressful events. Simply understanding that others who were exposed to the same traumatic event share a similar reaction can help an officer to process their reaction to what transpired and reduce their stress. Mental health is a continuum and dealing with trauma should be an ongoing process. Peer support services can be an essential and effective resource across a spectrum of mental health well-being and other challenges.

Many law enforcement agencies employ police chaplains for a variety of uses. In some law enforcement agencies the role of police chaplains may not be clearly defined, however police chaplains can be very

versatile fulfilling a variety of essential tasks from speaking at department events, assisting with community relations or counseling troubled police officers. If properly selected and trained police chaplains can also be a useful resource to help strengthen officer well-

ness programs. Not all clergy have the proper background to fill this role, and like peer team members, they should have proper training in counseling when engaged in an officer wellness program. Departments that wish to utilize chaplains in their officer

wellness programs should engage chaplains that have the proper training or provide training to existing police chaplains. While working for a police department, chaplains must not push specific religious beliefs and should make themselves available to all employees regardless of their religious affiliation. Maintaining availability and having an open-door policy can allow



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members who need assistance to meet with chaplains when necessary.

Many departments also have formal employee assistance programs, EPAs, available to their members. Larger departments may employ their own EAP counselors, while smaller departments may contract this service out to a vendor. These programs offer yet another option to create a robust multifaceted officer wellness program. Staff members employed as EAP counselors are educated and trained mental health professionals, who frequently hold relevant certifications and licenses. EPA counselors are trained to assist employees with a wide variety of issues from marriage problems, substance abuse, to properly dealing with trauma. Some departments have policies that mandate employees visit EAP if they respond to certain traumatic incidents.

Recent efforts to capture statistics on police officer suicides have shed light on the fact that it is a pervasive and troubling issue, resulting in more officer deaths annually than from assaults or accidents. Law enforcement leaders need to recognize this pervasive threat and work to create robust officer wellness programs. These programs should include training for officers on how to deal with stress, training to recognize indicators of suicidal ideations in others and establishing a multifaceted network of support services. However, perhaps most important of all, law enforcement leaders need to destigmatize the process to encourage officers who are struggling to seek the support that they need. This process needs to be ongoing just like the exposure of police officers to traumatic and stressful events throughout their careers.

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Yakima Police Department

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No-Knock Warrants: Understanding the Risks

During the last few years there has been significant debate over the use of no-knock, dynamic SWAT-style entries for the execution of search warrants. This debate reached a peak with the shootings of Breonna Taylor and Amir Locke during such warrant services. Some state legislatures have responded by banning or restricting no-knock warrants. Here in New York state, our highest court – the New York Court of Appeals – has recently ruled on a case involving the execution of no-knock search warrants, *Ferreira v. City of Binghamton*.ⁱ All law enforcement officers in New York need to be aware of this ruling and its implications. And while the case is only applicable to warrant executions in New York state, the example it sets is one officers nationwide should consider.ⁱⁱ

Before we get to *Ferreira*, I would like to start out with a broader overview of why there is such a focus on no-knock warrants as well as some policy/procedure impacts all law enforcement leaders should consider to ensure they are doing the right thing for their officers and community members. Note: The *Ferreira* case deals with civil liability, but liability is not the focal point of this discussion. Reduced liability is merely a side effect of doing the right thing for the right reasons.

The Evolution of No-Knock Warrants

I started as a police officer in 1984. During much of the first two decades of my career, our mission was driven heavily by the interdiction of illegal drugs, dubbed the “War on Drugs.” When the War on Drugs first took hold, criminal procedure law was written to



require knock-and-announce warrants to be the norm. No-knock warrants were the.

But as the focus on drug interdiction intensified, the exception soon became the norm. Justifications such as the ease of destruction of drugs, violent drug dealers and the propensity for weapons to be present were commonly articulated in warrant applications. Tactics involving “violence of action” – overwhelming force, speed and surprise – were all stated as justifications to



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explain how such dynamic entries could be safer for officers, while at the same time helping preserve evidence. SWAT teams became more common and were increasingly utilized to execute no-knock warrants.

In 1993 I joined the Colonie Police tactical team as a point man. After serving several no-knock warrants with no negative results, I was sold on the tactics. I found it amazing how fast we could clear an entire house while encountering little resistance because people had no time to respond. And I wasn't alone: Across the county, requesting no-knock endorsements for drug-related warrants and conducting dynamic raids became normal, with no consideration given to whether there were other ways to handle the situation. In hindsight, our success made us complacent. When considering the complexity of such operations, the lack of negative consequences should never have been a measure of whether the tactics continued to be appropriate.

But then in 1998 Tom Clancy published *Rainbow Six*, quickly followed by a video game of the same name. While an excellent book, it revealed many tactics routinely used in SWAT operations. The rise of the internet compounded the issue, making it easy to find and share information about police tactics. "Crack houses" became increasingly fortified, leading some SWAT teams to train to perform second-story entrances. A disturbing trend then started where suspects would be prepared for entry tactics. Suspects, knowing the pattern of breach, flashbang and entry, would be waiting behind a closed bedroom door, apparently to mitigate the effects of the flashbang, and would then open fire through the door while the officers entered, with tragic results. An internet search today for "SWAT officers ambushed" produces plenty of reading material.

During all this, the belief that the tactics would keep officers safe never wavered for many teams, except for those that suffered injuries or deaths. My epipha-

ny came during a no-knock raid for illegal drugs on a suburban house somewhere around 2000. The breach took longer than it should have due to a steel reinforced door. By the time we entered, the resident had taken up position at the top of a flight of stairs with a shotgun pointed at me and my cover officer as we entered. He thought he was being ripped off by another drug dealer as had happened in the past. The only thing that saved me was the large white POLICE letters on the front of my tactical vest. Discussions afterward led to what should have been a question being asked before every raid: What was in that house that was worth my life? Nothing.

Over the subsequent years, more and more tactical teams began to recognize the danger of dynamic raids

to officers and occupants of homes and restricted their use to very limited circumstances. But this evolution was by no means universally adopted, and the tactic is still used by many agencies to this day.

Risks and Priority of Life

I recently presented on no-knock warrants at a New York State Homeland Security Tactical Supervisor course. I am encouraged by the increased acceptance of the message,

which was not the case when I first started presenting it several years ago. While at the conference, I sat through a presentation by an FBI regional tactical team commander. At the end of his presentation, he made a very simple yet profound statement: Any SWAT team still doing things the same way they did even 10 years ago should quickly reevaluate the viability of their tactics. Unfortunately, there are teams still doing things the same way they did 20 and 30 years ago because they are fortunate enough to never have had anything go seriously wrong. Again, the lack of negative consequences is not an accurate indicator of appropriate tactics.

There are several other considerations law enforcement leaders need to evaluate that directly impact the



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risks created during dynamic no-knock raids in contemporary times:

The proliferation of guns in households across the country.

In 2020 and 2021, Americans bought over 42 million guns.ⁱⁱⁱ Residents awakened from their sleep by the sounds of someone breaking into their home could

ler)? If humans had to wait for the frontal lobe to make this determination, death or serious injury could result in the time that it would take. Such fast and intuitive decisions can save lives, but they can just as easily result in tragedy. The only way to mitigate this risk is to limit the exposure to such situations.

Technology advances and warning systems.

The shooting of two FBI agents in Florida in 2021 is an example of this issue. The target of the warrant was allegedly warned of their approach by a doorbell camera. This warning allowed him to fire at the agents through his door with a high-powered rifle.^{iv} Less-obvious surveillance cameras that can cover even greater areas are inexpensive and easy to install, providing even more warning of the approach of officers.

Insufficient information about the residence and its occupants.

In decades past, a check with postal inspectors could give you good information about who resided at a particular address. Those days are long gone; postal records

reasonably reach for their legally owned firearms to defend themselves, leading to tragic consequences for occupants and officers.

The risk of a mistake-of-fact shooting.

The facts of the Ferreira case serve as an example of this type of risk. A SWAT team executed a no-knock warrant on the home of a person suspected to be armed and dangerous. The point man immediately encountered Ferreira, who had been on the couch in the living room. The point man believed Ferreira had a gun in his hand and fired one round, seriously injuring him. An Xbox controller was on the floor; no gun was found.

I cannot know what did or did not happen here, but the science pertaining to how our brain functions can give us some guidance. Your amygdala serves as a form of danger “pre-screen device” to help keep us safe from sudden threats. It is intuitive and relies on limited information guided by expectations and heuristics, among other things. Is it a lion (gun) or a lamb (Xbox control-

lar address. Those days are long gone; postal records often provide misleading and out-of-date information. Many civil cases have arisen from raids on the wrong address, or the correct address but the targets had moved out, or lack of information on the presence of children in the residence, leading to flashbangs being deployed in and around young children. Considering the time it can take to conduct a proper pre-raid surveillance on a residence, it may be far more efficient and effective to have the surveillance team arrest the suspect in public and then serve the search warrant.

Failure to properly supervise specialty narcotics units and warrant applications.

The unfortunate truth is some specialty units become so consumed by their mission that they believe the ends justify the means. This can lead to overaggressive tactics and warrant services. It also can lead to officers lying or exaggerating information on warrant applications, as allegedly happened in the Breonna Taylor incident.^v This is inexcusable and damages the



entire police profession. But it is not just about lying or exaggerating. Who makes the decision as to what type of warrant to apply for? Is there an objective supervisory review? Proper supervision and risk management mandate objective review.

Failure to adhere to a proper Priority of Life.

This is probably the most important consideration, and everything discussed in this article so far is relevant to it. The National Tactical Officers Association (NTOA) has long established safety priorities:

1. Hostages/victims

2. Innocent bystanders

**3. Public safety personnel
(Police, EMS, Fire)**

4. Suspect(s)

5. Drugs/evidence (Controlling objective)

Using these safety priorities, the NTOA has taken the position for some time now that no-knock warrants no longer make sense, especially when the objective is the preservation of evidence. I strongly agree with this position. Most no-knock warrants for drugs essentially place the preservation of evidence over the safety of anyone else – including police officers.

Throughout my career I have heard countless officers and instructors talk of how officer safety is paramount. Countless “street survival” classes are dedicated to this concept, yet many agencies still adhere to using dynamic no-knock warrants, violating the priority of life and placing themselves and others at unnecessary risk. Ask an officer to charge into a house where the drug dealer suspect may have an assault rifle and there will probably be no shortage of volunteers. Yet those same officers will think you are nuts if you ask them to confront a person in crisis who is armed with a knife using anything other than a firearm. In the first situa-

tion, officers willingly place themselves and occupants at risk for the preservation of evidence because it is ingrained in their culture. In the second, the acceptance of some risk may help to save a life, but it deviates from typical street survival training, so it is rarely even considered. There is a clear disconnect here that seems to be founded on nothing other than “it is just the way it has always been.”

This is a complex and, for some in law enforcement, sensitive area. Are there still some situations where a no-knock, dynamic entry will be justified? Of course, but it should be only after a careful review of the objectives of the operation, consideration of the priority of life, and a review of any other possible options.



New York Court of Appeals Addresses the Issue

The Ferreira case spanned several years and involved federal district courts, the United States Court of Appeals for the Second Circuit, and finally the New York Court of Appeals (NYCOA). The legal issues were complex and numerous, and it is not my intent to conduct a comprehensive review of the case. Instead, I will focus on the issue decided by the NYCOA most relevant to no-knock raids in New York.

This case involved common-law negligence and dealt with the scope of the duty owed by municipalities

to the public under New York law. To succeed in such a case, a plaintiff must demonstrate (1) the municipality owed a duty to the plaintiff, (2) there was a breach of that duty, and (3) injury was proximately caused by that breach. It is important to understand the duty breached must be more than that owed to the public generally, otherwise the government could be held responsible for all wrongs to its citizens. When a municipality is

sanctity of the home and take temporary control of the premises and its occupants. In such circumstances, the police direct and control a known and dangerous condition, effectively taking command of the premises and temporarily detaining occupants of the targeted location. As a result, the municipality's duty to the individuals in the targeted premises, a limited class of potential plaintiffs, exceeds the duty the municipality owes to the members of the general public. A special duty therefore arises when the police plan and execute a no-knock search warrant at an identified residence, running to the individuals within the targeted premises at the time the warrant is executed. In other words, in those circumstances, the police take positive control of a known and dangerous condition, creating a special duty under the third situation recognized by this Court. vi

This ruling is very straightforward – in a no-knock search warrant situation, a special duty is established, period. That does not mean there will be automatic liability if someone is harmed during the warrant service. But it does mean the case will go to a jury for a determination whether the duty was breached by the police under the specific circumstances of the case. To the average reader this may not seem that significant, but it is. Most special-duty litigation arises under the second bullet above – the voluntary assumption of a duty – and establishing a special duty can be very difficult. Many municipalities are dismissed from suits because of the failure of a plaintiff to establish a special duty. But the Ferreira ruling means using a no-knock entry automatically creates a special duty, and the case will proceed to trial.

Prioritize Life

The last few years have been difficult for law enforcement officers across the country. For many of you, this article simply reinforces what you already know. But my hope is those who have not previously considered these issues will give them due consideration. Again, while the Ferreira case is only applicable to New York agencies, the reasoning of it is entirely consistent with all the points raised within this article.

To all of you who accept the challenges of law enforcement and are willing to place yourselves at risk only when it is warranted to save lives, thank you.



providing a government function, such as law enforcement, liability may only be imposed when a special duty (sometimes called a special relationship) is established between the injured person and the government agents.

New York case law has generally recognized three ways to establish a special duty – one that goes beyond what is owed to the public generally. A special duty can arise when:

1. The injured party belongs to a class for whose benefit a statute was enacted; or
2. A government entity voluntarily assumed a duty to the injured party beyond what was owed to the public generally; or
- 3. The government entity took positive control of a known and dangerous safety condition.**

I have bolded the third bullet as that is the crux of the relevant ruling of the court:

In a no-knock warrant situation, the police exercise extraordinary governmental power to intrude upon the



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INTERSECTIONS

Traffic Safety Committee

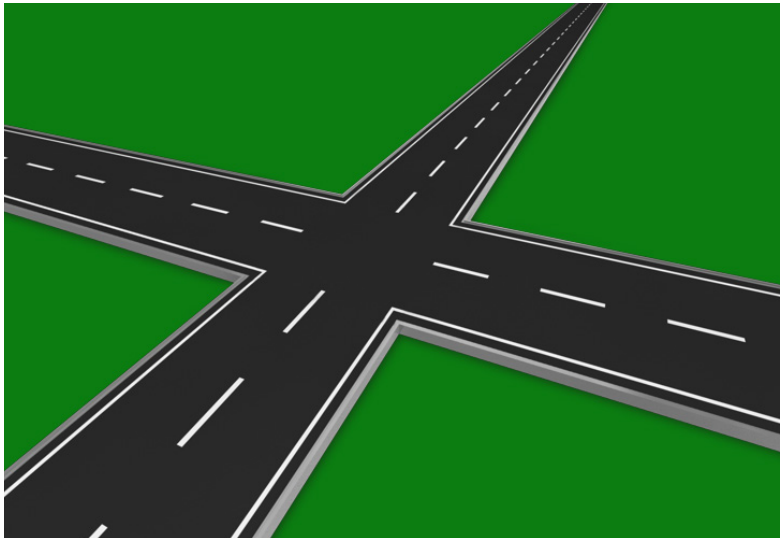
By Lindsay Tomidy, STOP-DWI Coordinator & Office of Traffic Safety Supervisor,
Monroe County Department of Public Safety

What does it mean to be a focus community within the New York State Pedestrian Safety Action Plan? It means that our County has come in third place for a contest that we would prefer to not be a part of. We had the third most pedestrian related crashes for the entire state, at 984 within a 5-year period. With the action plan, the state covers this problem utilizing enforcement, education and engineering. Unfortunately, our office came to realize that the three E's were not enough within our county. We saw that not only were we seeing substantial crashes overall, but that our fatalities and serious injuries were climbing. More and more lives have been lost to this preventable crime.

In assessing the gaps of the current action plan, we came to find that men ages 18-69 were being missed with current education efforts. Engineering cannot be the sole source of crash prevention and enforcement often comes after a crash has occurred. As such, our team decided to resurrect an old public safety campaign called #Drive2bBetter. After a couple of internal meetings with the advertising agency that originally worked on this awareness campaign, it was decided that the county would start out the relaunch with a press conference.

Our press conference brought together many different perspectives to the world of traffic safety. Our County Executive shared of the preventable nature of this crime and how even one fatality is one loss too many, Dr. Ann Brayer a Director for the fellowship in Pediatric Emergency Medicine shared about how preventable injuries like those from a crash are the num-

ber one cause of death for children under 18. While it is not always the driver's fault for a pedestrian and bicyclist related crash, they hold the most power with a 3,000-pound vehicle in their hands. They can likely walk away from this type of crash just fine, while the pedestrian or bicyclist on the other end of the crash will be forever changed, if they survive.



With the relaunch, will bring a heightened awareness to improving driver behavior by highlighting the critical actions of slowing down, scanning for pedestrians, and giving bicyclists at least 3 feet of space on the road. This message has been appearing in various advertising forms in the past few months, and the County encouraged community members to help spread the word through their networks.

You can learn more about this campaign at www.drive2bbetter.com.

When talking about the importance of traffic safety within communities, the realization that it could be any one of our family members can help to bring the message home. The story within these videos we repurposed is still relevant and they work to show the human aspect to all in the community portrayed. The beginning shows the action of driving with cartoon characters and their response to pedestrians and bicyclists on the roadways. The drivers work to slow down, scan for pedestrians and leave space in these videos with the ending switching the image to the actual human being vs. their cartoon character. This takes the drive full circle to highlight how we are all real people living within the same community, giving

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us the power to be best equipped to keep our loved ones safe. On the other end of reckless driving, can be your child, your spouse, or a law enforcement officer who is on bike patrol. You truly never know.

Our campaign materials were distributed as far as we were able to, with our minimal budget. We counted heavily on press coverage, sharing amongst social media followers, and other grassroots ways to remind people to #drive2bBetter. With any opposition we're faced with in the community, we're always able to

back up our cause with data. Crash contributing factors for pedestrian and bicyclists crashes have failure to yield right of way and driver inattention as the top factors.

Going into the summer months, we still have billboards that were chosen based on number of pedestrian/bike related fatalities in the locations, more radio and TV ads, the wrapping up of social

media ads and more content for the social media pages. These crashes could have all been prevented. These lives did not need to be lost. Together we can work to #drive2bBetter for the lives that were.



2023 New York State Law Enforcement Recognition Event

Each year, Mothers Against Drunk Driving (MADD) New York, the Governors Traffic Safety Committee (GTSC), & STOP DWI honors Officers and agencies that protect our communities and work tirelessly to obtain justice for victims affected by drunk and drugged driving. The NYSACOP Traffic Safety Committee would like to congratulate all of our members' agencies and personnel who received awards at the 2023 New York State Law Enforcement Recognition Event held in Albany on May 2nd. Thank you for your outstanding work and for your commitment to traffic safety.

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Focus on Training: Human Performance-Based Recommendations



Many law enforcement training programs and techniques are not adequately suited for the job. They just “check a box.” Patrol officers often arrive first on scene and perform flawlessly with rapidly evolving situations that require them to make split-second decisions. This decision-making may be related to what officers learned in the academy and at their departments. To that end, leaders must view training with the fundamentals of human performance in mind and understand how these factors affect officer performance.

HUMAN PERFORMANCE

Human factors describe “how human beings function within various work environments as they interact with equipment in the performance of various roles and tasks.” *Human performance* is when those behaviors are executed to accomplish specific results.¹

Traditionally, exercise physiologists and trainers who work with elite Olympic or professional athletes discuss human performance. However, many argue that police officers are no different than professional athletes. After sitting in a patrol car for hours, officers are expected to chase a suspect 30 to 100 yards while carrying 25 to 35 pounds of gear. They may have to tussle with the suspect, apply handcuffs, and communicate to dispatch their location and what happened. These expectations require officers to always maintain their physicality, breathing, strength, and fine motor and communication skills.

Elite athletes are afforded training time with special coaches during the week leading up to their event and in the offseason. On the other hand, officers are in the

arena every day they work, always primed and ready to go without any physical or mental recovery time. Therefore, human performance-based training should be implemented at every police department, and the elements must relate precisely to the required job.

TRAINING

Research proves that 80% of human errors result from organizational failures.² New officers are influenced by academy instructors, field training officers, sergeants, and their partners. They acquire good and bad habits,



some of which may be training scars from old, antiquated training ingrained in officers because it is “how it has always been done.” Trainers should assess and understand what officers’ true, needed performance is and be able to measure it or have articulatable, performance-based results. Law enforcement training, much like that of professional athletes, must be human performance-based and meet the needs of the task expected. For example, golfers do not dedicate much time to strengthening their upper body; they focus on lower body and core exercises because that is where the true

strength for their swing lies.

Likewise, planned or scenario-based training tasks officers with situations realistic to the job.³ It induces stress through time limits and involves decision-making, providing them with the tools needed to deal with unpredictable service calls. Further, the training load and stressors should be balanced.⁴ A program that does not equal the level of stress officers experience while on the job is just “check the box” training with no real benefit to the officer. In effect, such training does not result in optimal readiness to perform.

MODERN APPROACH

Human performance-based training is an innovative approach that fits the growing needs seen in police departments nationwide.

Firearm Training

Traditional firearm training requires the shooter to stand still and aim at a paper target. The distance between the shooter and target ranges from 3 to 50 yards, and a score is determined after shooting a prescribed number of rounds. Sometimes, there is a time limit, and the passing score and target size may vary.

Agencies require officers to qualify at least twice a year, but some do as often as four times. Qualifying means “to fit by training, skill, or ability for a special purpose.”⁵ Does firing at a target at the prescribed percentage adequately train officers for a deadly force encounter? It may only train them to draw their handgun from its holster and shoot a target. This standard is subpar at best and

only sets officers up for failure and, potentially, loss of life.

Hebb’s Law

According to Hebb’s Law, one of the most well-re-



searched and accepted concepts in psychology and human performance, the brain’s motor pathways do not form in isolation. This means the context and conditions in which the pathways are created (e.g., training) matter.⁶

For example, the standard handgun draw stroke consists of multiple discrete motor movements that occur in rapid succession: gripping the gun, undoing the holster’s retention features, removing the weapon from its holster, aiming, and placing the finger on the trigger. Every time an officer draws their gun, their brain’s motor cortex builds stronger motor neural pathways.⁷

Applying Hebb’s Law, if an armed suspect confronts an officer at close range, the officer’s brain will recognize the threat as a cue to execute the learned automatic response of

“Firearm training must replicate a realistic environment by having a moving component (either the target or the officer) instead of shooting at paper targets or images projected onto a screen.”

drawing a gun. If the officer's training involved hundreds or thousands of repetitions at the firing range without moving their head or feet, they will likely do the same thing during a real attack. This concept could explain how stationary firearms training is creating paired responses that cause officers to do the wrong thing when confronted with real-world, rapidly unfolding firearm threats.⁸

Research

A 2018 study conducted on shooting accuracy found disturbing results. Researchers analyzed 149 officer-involved shootings recorded over a 15-year period in a large metropolitan police department. In nearly half of those incidents, officers missed the suspect entirely.⁹ This cannot be the accepted way to train officers responsible for safeguarding their communities. Those missed rounds may have hit innocent citizens or caused damage to private property.

The study highlights the importance of increasing marksmanship proficiency. Firearm training must replicate a realistic environment by having a moving component (either the target or the officer) instead of shooting at paper targets or images projected onto a screen. Additionally, police administrators should mandate the training take place in mock buildings or towns to test officers' shooting judgment and accuracy.¹⁰

Taser Training

Another area that may not currently align with human performance concepts is Taser training. "Weapon confusion" has been a subject of debate, and trainers need to spend time understanding cognitive errors that can occur when using a weapon that is designed, feels, and functions like a gun. "A 'capture error' can occur when an infrequent action like drawing a Taser is non-consciously substituted by a similar, more familiar and more practiced action — like drawing a firearm."¹¹

Several recommendations can help lower the risk of capture error and better prepare officers for using Tasers.

- Separate holsters or different carry positions from the gun
- Taser simulation suits
- Moving targets that allow the user to make split-second decisions
- Practice drawing a Taser with the nondominant hand

During critical incidents, humans are involuntarily

attracted to the most conspicuous stimulus — often, the person, object, or action perceived to pose the greatest threat — and do not pay attention to factors that would be noticed under calmer circumstances. As such, it is expected that when an officer is overfocused on the perceived threat, they will not notice the weight, shape, and color of a Taser as compared with a full-size firearm, resulting in the wrong weapon drawn.¹²

CONCLUSION

Law enforcement leaders and trainers must understand that the job they do may have long-lasting ramifications. Check the box training is close-looped, involves a stationary stance and targets, does not account for realistic conditions or stressors, and involves no decision-making. Officers who undergo this type of training learn to make critical decisions with environmental cues rather than work their brain's cortex motor pathway.

Law enforcement training that involves weapons and de-escalation techniques must be part of annual use-of-force recertifications. However, agencies should know that training involves more than simply teaching defensive tactics, firearms, de-escalation, driving, and handcuffing. Such job-related tasks are specific, and training should mimic them closely while keeping the fundamentals of human performance in mind.

Training in real-life scenarios and making decisions with rapidly changing and evolving circumstances will improve officers' trained responses, increase officer and

“Training in real-life scenarios and making decisions with rapidly changing and evolving circumstances will improve officers' trained responses, increase officer and suspect survivability, and lower agency liability.”

suspect survivability, and lower agency liability.

Captain Nightingale serves with the Camillus, New York, Police Department and is a graduate of FBI National Academy Session 279. He can be reached at jnightingale@townofcamillus.com.

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“I Got to Know”: Curiosity Is Essential for Risk Management

By Gordon Graham

Gordon Graham here and hello again! Thanks for taking the time to read my ramblings – and for the many emails I got regarding the work of Dr. Tony Kern after my last article. I am so happy that many of you are reading his books. My favorite “K book” is *Going Pro – The Deliberate Practice of Professionalism* – required reading for the class I teach at the University of Virginia in the Master of Public Safety Program.

Let me digress for just a moment before continuing my comments about aviation tragedies and what we can learn from studying them. I had the opportunity to do a Lexipol webinar with Dr. Kern a few years ago, and during the preparation for this event I told him, “You are the smartest person I have ever met.”

Over the decades I have met a lot of very smart people, but Dr. Kern is truly at the top of my list. His response to my comment was very quick: “I don’t know if that is true, but I do know I am intensely curious.”

That made me think. First it is a demonstration of his being humble – which is an admirable trait. Second, it made me wonder: Is there a link between being curious and being smart? I have never considered myself to be all that “smart,” but I too am very, very curious – and that drives some people (including Mrs. G.) nuts!

Why did Ford choose a “small e” for the name of their new division focusing on electric vehicles? Why did Elon Musk name his cars “Y” and then “S” and then “X” and then the number “3”? Why did Ford not continue with the success of the name “GT-40” when they recreated this famous racecar in the early 2000s (it won four consecutive years in the 24 Hours of Le Mans – including the historic 1-2-3 placing in 1966) –

and instead named it the GT? (The answers to all these important questions are at the end of this writing.)

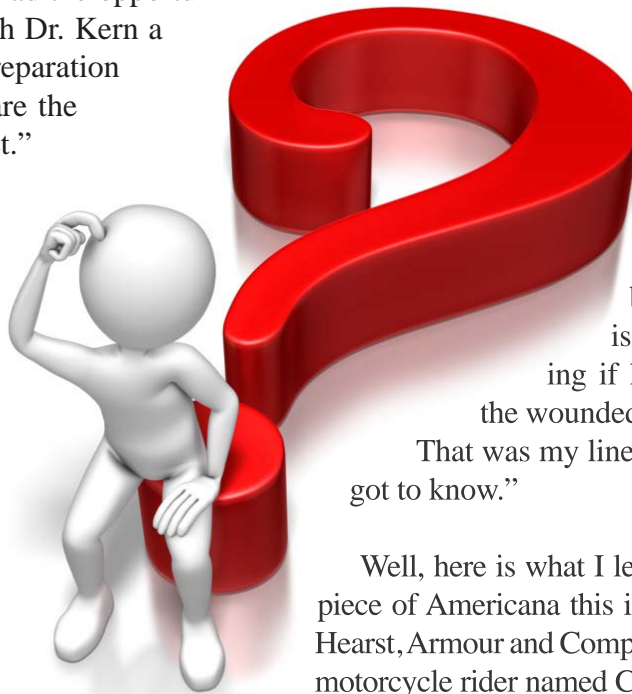
Hanging from the ceiling of one of the display areas of the Smithsonian National Air and Space Museum in Washington, D.C., is an ancient plane with “Vin Fiz” painted on the bottom of the wings. On a visit to the museum a few years ago, my brain defaulted to my “tremendous” knowledge of the “dead” language known as Latin. But somehow “wine fertile” didn’t add up for the name of an airplane. So, my mind jumped to that famous line near the beginning of the first Dirty Harry movie in 1971 (I watched some of the filming when I worked at Swensen’s Ice Cream while at San Francisco State College).

Harry shoots the armed robbery suspect and is pointing his .44 Magnum at him wondering if he fired five or six shots, and the wounded suspect says, “I got to know.”

That was my line as I looked at the Vin Fiz – “I got to know.”

Well, here is what I learned – and what a fascinating piece of Americana this is, involving William Randolph Hearst, Armour and Company of Chicago, and a daredevil motorcycle rider named Cal Rodgers – all this happening in 1911. As you know I am limited on words in these writings, but a search for “flight of the Vin Fiz” will fill in all the blanks in my recital of this wonderful piece of history.

Mr. Hearst was the first bi-coastal businessman in the U.S. While Ford lived, worked and played in Michigan, and Carnegie lived, worked and played in New York, and DuPont lived, worked and played in Delaware, Hearst had homes and businesses on both coasts – and he believed in “hands on management” so he travelled back and forth. Airlines were nonexistent in 1911 – it was only eight years earlier that Wilbur and Orville got things moving in aviation – so Hearst



travelled by train from New York to California. Even the fastest train took several days to cross the nation. Hearst, being a visionary, said to himself, “They are going to make these planes bigger, faster, stronger – and someday they will put seats in them, and someday they will have paying passengers and there will be airlines and they will need airports and we will put a big one in New York and a big one in San Francisco – and they will have to refuel halfway across the nation – so we will put a big one in Chicago and they will call it O’Hare (another fascinating piece of Americana – who was O’Hare?) and there will be delays in Chicago 24/7/365 and” ... well, you know the rest of the story.

WRH wanted to speed things up, so like Ferdinand and Isabella did for Columbus, he put a prize on the table: “First person who can fly cross-country in 30 days in an airplane gets \$50,000.” That was a huge amount of money back then. This brings us to Calbraith Perry Rodgers. Part of a family with a long military history, he was a “daredevil” with experience in racing cars and boats. He was also a novice pilot. “All I have to do is fly a plane cross-country in 30 days and I get \$50K – I can do that.” But he had a problem: He needed a plane.

Cal (like the later Cal Worthington – and there is another piece of Americana – his last car dealership was sold earlier this year and if you are curious you will read all about him) had a plan. He went to Armour and Company (which was developing a new drink called the Vin Fiz) and convinced them he had a plan for national advertising of their new product: “If you support me financially I will call it the Vin Fiz and wherever I land to fuel up there will be a crowd of people and the Hearst News Corporation – and I will tell people to drink Vin Fiz.” (Probably not the exact quote but you get my drift on this.) Amour and

Company agreed, and they gave Cal a used airplane (a Wright Brothers Pusher Bi-Plane model EX with 35 horsepower). With great fanfare he took off from Sheepshead Bay in Long Island on September 17 with the goal of getting to California in 30 days. Sadly, he did not make it ... in 30 days! It took him 49 days to get to California with some 75 stops and at least (the number varies) 16 crashes en route!



Calbraith Perry Rodgers was an American aviation pioneer. He made the first transcontinental airplane flight across the U.S. from September 17, 1911, to November 5, 1911.

We are closing in on the end of this rambling – so what is my point? Since that very first cross-country flight in 1911, THERE ARE NO NEW WAYS TO CRASH A PLANE. Every possible permutation on how to crash a plane occurred on that very first cross-country flight. He ran out of fuel, he hit fixed objects, parts fell off his plane, he was carrying too much weight, he hit bad weather and had visibility issues – and sadly, shortly after he touched down in California on November 5 – he ran into a flock of birds (just like Sullenberger) and died in that crash.

I wrap up all my live programs with the three basic rules of risk management. Rule One is this – THERE ARE NO NEW WAYS TO GET IN TROUBLE – THE ERRORS YOU ARE GOING TO MAKE CAN BE PREDICTED FROM THE ERRORS ALREADY MADE. Planes have figured out no new ways to crash, restaurants have figured out no new ways to poison people, mines have figured out no new ways to collapse, ships have figured out no new ways to sink – and cops have not figured out any new ways to get in trouble. We keep on making the same mistakes over and over and over again!

As I continue with these articles, please keep Rule One in mind. I like to learn from tragedies in other high-risk industries, and aviation is one of my favorite professions to study, because they have truly figured this out. The safety record of aviation (particularly in

America) is excellent because they continue to learn from past errors. The “learning management system” in the aviation world is much more robust than what we have in law enforcement – and that will be my focus in my next writing.

Until then keep reading and learning – and be safe.

Answers

Why did Ford choose a “small e” for the name of their new division focusing on electric vehicles? After multiple phone calls to Ford, I finally found a young fellow who told me the small “e” was in homage to Albert Einstein and his famous formula $e=mc^2$. But when I went to fact-check that, I discovered many sources use a capital E when writing this classic equation. So I am still in a quandary over this question.

Why did Elon Musk name his cars “Y” and then “S” and then “X” and then the number “3”? While I have not spoken to Mr. Musk directly (although I do have a call to him awaiting a response) his staff told me that Ford Motor Company had the trademark for the capital “E” (used in conjunction with Model) and they refused to allow Tesla to use it. So he played around with the number “3” to make it look like an “E.” He was trying to spell S-E-X-Y so instead got S-3-X-Y. But when you have a couple of hundred billion dollars lying around you can pretty much spell

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words whatever way you like.

Why did Ford not continue with the success of the name “GT-40” when they recreated this famous racecar in the early 2000s?

Another trademark issue: After the success of the GT-40 in the 60s, Ford failed to protect the name with a trademark. Another company (Safir Engineering) was building replica Ford GT-40s and they trademarked it. Ford was unable to negotiate a deal to use GT-40. Some trivia for you: The 40 represented the height of the car (although it was actually 40.5 inches) that was built in the 60s. The newer version was about 4 inches taller, so they just went with GT.



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

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News Around New York



New York State Police

We are underway for Round 2 of the PGA Championship at Oakhill Country Club in Pittsford, NY. Troopers are assisting the public with traffic control and on-course at Oak Hill Country Club.



Yorktown Police Department

Great day for Cops N Cones at YPD HQ!!! We'll be sharing a lot more photos Tuesday, and if you'd like to share some of the photos you make have taken, please email them to info@yorktownpd.org We'll post them up with our photos. Thank you again for the support and for kicking off Police Week 2023 in such an awesome way!! Even K9 Spar got the ole Ice Cream Emergency Pup Cup and Mr. Lachterman came away from the encounter with all of his digits!!



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