MEMORANDUM

To: President Yoes, Executive Board and National Board of Trustees

From: Larry James, General Counsel
Crabbe, Brown & James LLP
500 South Front Street, Suite 1200
Columbus, Ohio 43215
Tel: (614) 229-4567 Cell: (614) 581-1125
Fax: (614) 229-4559
Email: ljames@cbjlawyers.com

Re: 2021 Biennial Report
Indianapolis, Indiana - August 15-20, 2021

File No.: 10093-27992

Date: June 7, 2021

I. AMICUS FILINGS SINCE FALL 2020 BOARD REPORT

A. *Fowler v. Irish* (U.S. Supreme Court Case No. 20-1392)

1. Question Presented

Did the First Circuit err in denying qualified immunity to Petitioners where: (A) neither this Court nor the First Circuit had ever before recognized the state-created danger doctrine; (B) the First Circuit had previously held that use of necessary law enforcement tools could not provide the requisite affirmative act for application of the doctrine; (C) there is a split among the circuits regarding both the existence and necessary elements of the doctrine; and (D) in no identified case did a court apply the state-created danger doctrine in sufficiently analogous factual circumstances to have put Petitioners on notice that they assumed a constitutional duty to protect by leaving a voicemail for a suspect or that such an act was so egregious as to "shock the conscience?"

2. Facts of the Case

The facts of this case are lengthy and the details are important. Please see the Petitioner's Petition for Writ of Certiorari which includes a recitation of the facts and the lower court decisions attached thereto as an appendix.

3. Lower Court Decisions

The trial court granted the defendant officers' motion to dismiss. The district court concluded, in part, even if the plaintiff had stated a state-created danger claim (which had never been adopted in the First Circuit), the officers were entitled to qualified immunity because they did not violate a clearly established constitutional right of which a reasonable officer would have been aware. The First Circuit vacated the dismissal and remanded the case for further discovery.

The trial court granted the defendant officers' motion for summary judgment. The district court noted that neither this Court nor the First Circuit had ever adopted the state-created danger doctrine and that because there was a "split on the issue" among the courts of appeals that have adopted the doctrine there was no consensus of "persuasive authority." The court concluded that because "the state-created danger doctrine was not clearly established at the time of the acts by [Detectives Perkins and Fowler], they are entitled to qualified immunity."

The First Circuit vacated the award for summary judgment. It held that it was clearly established in July 2015 that the Petitioners' actions were unconstitutional and that they were thus not entitled to qualified immunity.

4. NFOP's Position

In its brief, the National FOP highlighted the importance of the qualified immunity doctrine for law enforcement officers. At the time Officers Fowler and Perkins began their

investigation into Respondent's alleged sexual assault, the state-created danger doctrine had not yet been established in the First Circuit. The lower court mistakenly found the contours of Respondent's due process claims for state-created danger were clearly established.

Even if the lower court properly found the law to be clearly established on July 15, 2015, officers Fowler and Perkins' investigation was reasonable. None of their actions "shock the conscience." If we are to accept the First Circuit's formulation for the state-created danger doctrine, this matter is not the occasion to find it applies.

Finally, the National FOP underscored the legal paradox law enforcement find themselves in should the lower court's decision stand and why qualified immunity is an appropriate (and important defense). Should it stand, under the First Circuit's reasoning, an officer forfeits qualified immunity and risks civil liability if—while the officer is performing their discretionary law enforcement duties and investigating a complaint of criminal activity—something happens to the individual at the hands of a third party in the interim. But an officer will also forfeit qualified immunity if they investigate a complaint too quickly and arrest someone accused of criminal conduct without probable cause in violation of the Fourth Amendment. Either way, under the First Circuit's decision, an officer's discretion in the performance of criminal investigations will be significantly restrained.

B. ***Lange v. California*** (U.S. Supreme Court Case No. 20-18)

On February 24, 2021 the Supreme Court of the United States heard oral argument in *Lange v. California*. The case arises out of the California State Court, First Appellate Division and examines the Fourth Amendment and the so-called "hot pursuit" doctrine. The hot pursuit doctrine provides that police may pursue a fleeing suspect into a home—without a warrant—when they have probable cause to make an arrest and when they set that arrest in motion in a public place. *United States v. Santana*, 427 U.S. 38 (1976). A decision is expected sometime this summer.

1. Question Certified for Review

Does pursuit of a person who a police officer has probable cause to believe has committed a misdemeanor categorically qualify as an exigent circumstance, sufficient to allow the officer to enter a home without a warrant?

2. Facts of the Case

Lange v. California stems from a California State Highway Patrolman's attempt to effectuate a traffic stop. Around 10:20 PM, the officer heard loud music coming from an orange vehicle; he also heard the vehicle honk four to five times for no apparent reason. The loud music and the honking at no particular target constituted violations of California law. The officer then followed the vehicle as it drove northbound. The vehicle turned right, and the officer followed to effectuate a traffic stop. The officer briefly lost sight of the vehicle as it turned right, but eventually regained sight. The vehicle turned left, and the officer again

followed. The officer accelerated to close the gap between the vehicles. The vehicle slowed to a stop in the middle of the road. After 2 to 4 seconds the vehicle proceeded forward, at which point the officer activated the patrol's overhead lights.

The officer testified that the vehicle failed to yield, and so he followed it into a driveway. The vehicle went into an attached garage. As the garage door started to close, the officer exited his vehicle and stuck his foot in front of the sensor to send the garage door back up. Mr. Lange was still in his vehicle with the driver's side door open when the officer entered the garage.

While inside the garage, the officer asked Mr. Lange if he had noticed the officer. Mr. Lange replied that he did not. The officer asked Mr. Lange for his license and registration. He also asked Mr. Lange why he was playing his music so loudly and how much he had had to drink. Eventually, the officer and Mr. Lange moved outside the garage, where the officer arrested Mr. Lange for driving under the influence. He was ultimately charged with misdemeanor violations of driving under the influence of alcohol and operating a vehicle's sound system at excessive levels. Lange's blood-alcohol level was later determined to be 0.245%, more than three times the legal limit.

3. Lower Court Decisions

Mr. Lange filed a motion to suppress the evidence, arguing that the officer's warrantless entry into his home violated the Fourth Amendment. The court found that "because the officer was in hot pursuit of a suspect whom he had probable cause to arrest for a violation of [state law], the officer's warrantless entry into Lange's driveway and garage were lawful." In other words, the court ruled in favor of the State of California and law enforcement, holding the officer's entry into Mr. Lange's garage without a warrant did not violate the Fourth Amendment because the officer was in "hot pursuit" of Mr. Lange, whom he had probable cause to arrest for a misdemeanor. The court denied Mr. Lange's motion to suppress and he was ultimately convicted. The court of appeals affirmed Mr. Lange's conviction.

4. Oral Argument Before the Supreme Court

On behalf of the Petitioner, Mr. Lange, Stanford law professor Jeffrey Fisher asked for a reversal of the California state court ruling. He argued it is not too much to ask for police officers to procure a warrant before "breaching the Fourth Amendment's most sacrosanct space" absent an emergency situation, and especially where the underlying reason for the stop is a misdemeanor offense. Thus, Lange asks the Court to reject the "categorical" rule under the hot pursuit doctrine proposed by amicus.

The State of California, represented by the state's deputy solicitor general, Samuel Harbourt, did not defend the state court decision. Instead, it agreed with Lange that the Court should reject a categorical rule in favor of requiring officer's to demonstrate a case-specific basis to enter the home without a warrant.

The Court appointed Amanda Rice, a Detroit lawyer, to argue on behalf of amicus curiae, and in support of the judgment below. Ms. Rice advocated for the "exceedingly narrow" scope

of the categorical rule under the hot pursuit doctrine. She argued it appropriately balances law enforcement and privacy interests, provides necessary guidance to officer, and avoids unnecessary constitutional litigation.

The justices were concerned with how to formulate a workable rule in the context of the hot pursuit doctrine for law enforcement. Multiple justices inquired about the line between felonies and misdemeanors. Justice Breyer, for example, pointed out the different definitions for misdemeanors in Massachusetts and California. The justices also seemed to recognize the precarious situation officers are put in when a suspect flees. Justice Sotomayor, for example, asked if the nature of a hot pursuit itself creates "a sense of urgency" wherein a warrantless entry might be appropriate?

5. NFOP's Position

The case has garnered significant attention from the media, academics, and legal scholars. *Nineteen* amicus briefs have been filed, with briefs from various states, the Department of Justice, the ACLU, and the National FOP. In its brief, the National FOP advocated that there is no Fourth Amendment violation when: (1) a law enforcement officer demonstrates an intent to conduct a brief investigatory stop or to set in motion an arrest in a public place; (2) the suspect ignores or disobeys the officer's lawful order to "STOP" or "PULL OVER"; and (3) the officer, while in hot pursuit of that suspect, enters the suspect's home without a warrant.

Under the hot pursuit doctrine, the rule advocated for by the National FOP—which mirrors the initial ruling from the California state court—protects the interests of both the public and law enforcement officers by encouraging safer roadways and discouraging flight for minor offenses. Moreover, this rule would account for the training, experience, and internal department pursuit policies that guide every law enforcement officer's decision to pursue a fleeing suspect, along with the different risk factors that will vary with each case. As a result, the sought-after ruling will not lead to aggressive policing practices, because law enforcement is well-prepared to ensure that pursuit of a fleeing suspect (and subsequent warrantless entry) is ultimately a rare—but objectively justified—scenario.

C. ***Potts v. City of Devils Lake*** **(North Dakota Supreme Court Case No. 20200144)**

The case involves a former police officer, that was not criminally charged, but was terminated after a struggle with an individual resulted in the officer's duty weapon discharging 3 to 4 times, striking and killing the individual. The officer was responding to multiple 911 calls about an individual attempting to break into a trailer home. In reviewing criminal charges, the state's attorney determined that criminal charges were not warranted, and the officer had probable cause to believe the use of deadly force was necessary. Still the officer was terminated.

The NFOP did not weigh in as amicus, opting instead for an amicus brief from the state lodge.

The officer asked the North Dakota Supreme Court to create a public policy exception to the termination of an employee at will for a law enforcement officer acting in self-defense during the course of an arrest. The North Dakota Supreme Court declined and affirmed the lower court's decision to grant summary judgment to the City of Devils Lake. The court concluded that the state legislature is better equipped to decide whether to recognize any such specific exception to at-will employment under North Dakota law.

D. ***FOP Chicago Lodge No. 7 v. Illinois*** (U.S. Supreme Court Case No. 18-1395)

1. Question Presented

The issue involved the lower court's denial of the local FOP Chicago Lodge No. 7 Motion to Intervene in the case against the Chicago Police Department that ultimately resulted in a Consent Decree. We filed an amicus brief in support of FOP Chicago's petition for certiorari. The Court ultimately declined to hear the case.

2. Facts of the Case

On August 29, 2017, the State of Illinois filed a complaint against the City of Chicago for the purpose of seeking reforms in the Chicago Police Department. The parties agreed to stay the litigation. DOJ found reasonable cause to believed that CPD engages in a pattern and practice of using force. On January 31, 2019 a consent decree—negotiated by the Illinois Attorney General's Office and the City of Chicago—at the exclusion of the FOP, was approved. The FOP filed a Motion to Intervene in the lawsuit on June 6, 2018. The district court and the Seventh Circuit denied the Motion as untimely.

3. NFOP's Position

The FOP maintained that the consent decree impairs its ability to protect its collective bargaining agreement and infringes upon statutory rights of its officers. The FOP intervened when it knew that its interests were not going to be protected. Until intervention, the FOP was assured by the State that the consent decree language would not compromise provisions of the CBA. The Seventh Circuit used an improper standard for assessing the timeliness of the FOP's Motion. Broadly, early settlement and negotiation in consent decree litigation should be encouraged. When the FOP is denied a seat at the table true systemic reform is hindered.

4. Result

The Supreme Court declined to hear this case.

E. ***Kansas v. Glover*** **(U.S. Supreme Court Case No. 18-556)**

1. Question Presented

The issue here involved whether, for purposes of an investigative stop under the Fourth Amendment, it is reasonable for an officer to suspect that the registered owner of a vehicle is the one driving the vehicle *absent any information to the contrary*.

2. Facts of the Case

While on patrol, an officer ran a registration check on a pickup truck with a Kansas license plate. The registration electronic database indicated that the truck belonged to Charles Glover, Jr. and Glover's driver's license had been revoked. With that information, the officer stopped the truck. The officer did not observe any traffic infractions nor the identity of the driver. It turned out Glover was indeed the driver and he was charged with driving while his license was revoked. Glover moved to suppress all evidence because the stop violated the Fourth Amendment.

3. NFOP's Position

Under the Fourth Amendment, it is reasonable for an officer to suspect that a driver is also the registered owner of a vehicle for purposes of an investigatory traffic stop. In furtherance of officer and public safety, the officer may make limited inquiries in connection with such a traffic stop such as asking to see a driver's license and proof of insurance.

4. Supreme Court Decision

In an 8-1 opinion delivered by Justice Thomas on April 6, 2020, the U.S. Supreme Court ultimately agreed with the National FOP, law enforcement, and the State of Kansas. The Court found that under the totality of the circumstances, the officer drew an entirely reasonable inference that Glover was driving while his license was revoked. In dispelling Glover's arguments, the Court reasoned that police officers are able to rely not just on training materials or experience in forming reasonable suspicion, but on common sense obtained outside of their work duties. Here, it was a commonsense inference that the owner with the revoked license was likely the driver of the vehicle.

The Court did, however, emphasize the narrow scope of its holding by noting that additional facts might dispel reasonable suspicion. By way of example, the Court stated that if an officer knows that the registered owner of the vehicle is in his mid-sixties but observes that the driver is a female in her mid-twenties, then the totality of the circumstances would not raise a suspicion that the particular individual being stopped is engaged in wrongdoing. In this case, however, Deputy Mehrer possessed no such exculpatory information to rebut the reasonable inference that Glover was driving his own truck.

F. ***McCaffrey v. Chapman*** **(U.S. Supreme Court Case No. 19-342)**

1. Question Presented

The issue involved the removal of a deputy sheriff for supporting the political opponent of the elected sheriff. The deputy sheriff was terminated from his position. The deputy sheriff alleged a violation of his First Amendment rights. We filed an amicus brief in support of Deputy McCaffrey. The U.S. Supreme Court declined to hear the case.

2. Facts of the Case

Deputy Sheriff McCaffrey held the second lowest possible rank in the Loudoun County Sheriff's Office. His performance reviews were excellent. His support for the elected sheriff's opponent included a sign in front of his residence, serving as a delegate to the convention in support of the opponent, and an advisor to the Police Benevolent Association during the screening of candidates. The PBA ultimately endorsed neither candidate. The elected sheriff admitted to terminating McCaffrey due to "active disloyalty" in support his opponent.

3. NFOP's Position

Permitting the termination of police officers for supporting the political opponent of the elected office will render police department's less effective and erode the public's trust. The result of such terminations, especially in McCaffrey's case, is that experience, trained, and skilled officers will be taken out of the communities they protect and serve and replaced with officers possibly with less experience, but certainly with less familiarity. The FOP advocates that courts analyze officer speech in this context under *Garcetti*, rather than *Elrod-Branti*.

4. Result

The Supreme Court declined to hear this case.

G. ***Jones, et al. v. Lamkin, et al.*** **(U.S. Supreme Court Case No. 19-726)**

1. Question Presented

The issue was very similar to *McCaffrey*. Two deputy marshals from Georgia were terminated for supporting the opponent of the elected marshal. The FOP filed an amicus brief in support of the deputy marshals. The case is pending for cert before the U.S. Supreme Court.

2. Facts of the Case

Two deputy marshals openly supported the elected marshal's opponent. The deputies held law enforcement positions in Georgia. Deputy Moses wore campaign shirts, posted photographs on social media. Deputy Jones made social media postings about the opponent.

The deputy marshals were terminated when the elected marshal took office. The district court and Eleventh Circuit applied an "alter ego" approach and found that because the deputy marshals were the "alter ego" of the elected marshal, they could be terminated for political patronage.

3. NFOP's Position

Good policing is not contingent upon partisan values. Officers will protect and serve irrespective of political affiliation. At present, the circuits are split on the question of law enforcement and partisan dismissals. As discussed in McCaffrey, the FOP advocates for application of *Garcetti*. *Elrod-Branti* does not need to be overruled.

4. Result

The Supreme Court declined to hear this case.

H. Summary of All Amicus Matters

Since 2001, we have submitted 33 amicus briefs on behalf of the National FOP in support of the law enforcement community and FOP members. That includes six (6) filings with the United States Supreme Court since 2019.

A summary of those filings is attached hereto as Exhibit A.

II. OTHER PENDING LITIGATION

A. Rickia Young v. NFOP – Philadelphia

The NFOP was named as a defendant in a recent case out of Philadelphia regarding a posting made on social media of a local officer holding a child during some of the protesting over last summer. The mother of the child sued the officer for defamation and other invasion of privacy claims.

The posting was on NFOP social media for a little over two hours and did not show the child's face. The matter is being handled by local counsel in Philadelphia.

III. TASK FORCE INITIATIVES 2020–2021

A. Civilian Review Board Task Force

The NFOP convened a Civilian Review Board ("CRB") Task Force to develop the most practical and effective CRB model to recommend to state and local lodges. As part of this process, the task force reviewed departmental policies across the country, including the top 25 police departments (in size) that have CRBs. The Task Force reviewed law review articles, news reports, and studies to determine the most effective form of civilian review.

The mission of the Civilian Review Task Force is to provide general guidance to local FOP lodges and FOP leadership regarding model policies and best practices for a civilian-led police review commission. The Task Force reviewed the over 120 various oversight boards and commissions and drafted a "Model Policy" that our lodges may consult when developing their own best practices and policies. Each jurisdiction may have different needs and different experiences. Thus, one size may not fit all.

We reviewed the NFOP's "Model Policy" at the 2020 Fall Board Meeting. Thus, our 2020 Fall Board Report contains additional details about the "Model Policy." We continue to track these civilian-led commissions and their development across the country.

Cities can implement a civilian review body in a number of ways. The short answer is it depends on the jurisdiction. A few ways are noted below:

- **Executive Order** – For example, in 2016, Mayor Bob Buckhorn of Tampa, Florida established the city's Citizens Review Board. An executive order is done without a vote by the public.

- **Stand-alone Legislation** – For example, in 2021, Philadelphia introduced a bill detailing the powers and structure of the new police oversight commission. Legislation must be passed by the general assembly and signed into law by the state's governor.

- **Charter Amendment** – For example, in 2020, the board was placed on the ballot in Columbus, Ohio after approval by the city council. It appeared on the November ballot and was approved by voters as an amendment to the Columbus City Charter in the general election.

B. Collective Bargaining and Arbitration Task Force

The mission of the Collective Bargaining and Arbitration Task Force is to provide information to FOP lodges, members, and leadership about the impact of arbitration and collective bargaining on the law enforcement profession, with a particular emphasis on officer disciplinary matters. Under the prevailing narrative in the United States, police unions'

collective bargaining efforts and the arbitration of police officer disciplinary actions are often falsely accused of standing in the way of good policing. The goal of the Task Force is to provide a critical analysis of the facts surrounding this false narrative based on empirical data, research, studies, and reports.

We reviewed the NFOP's Collective Bargaining and Arbitration research and summary at the 2020 Fall Board Meeting. Thus, our 2020 Fall Board Report contains additional details about collective bargaining and arbitration as it relates to law enforcement.

C. Qualified Immunity Task Force

1. What is qualified immunity?

Qualified immunity applies only in *civil lawsuits* where a state actor is sued in his or her individual capacity for *performing a discretionary function* and the plaintiff seeks *monetary damages directly from the state actor.* The affirmative defense provides absolute protection from personal, civil liability.

2. What is qualified immunity not?

- Protection for those that "knowingly violate the law."
- Does not prohibit suits against the city, municipality, or other government entities.
- Protection from criminal charges.
- Protection from internal investigation, discipline, or termination.
- Does not apply to claims for injunctive relief.
- Does not apply to the failure to perform ministerial tasks.

3. Why do we have qualified immunity?

- *Police officers need protection in order to perform discretionary functions.* Every single factual scenario an officer encounters is different and unknown. It is extremely difficult for an officer to determine how a legal doctrine will apply to a split-second factual scenario that the officer confronts. Thus, unless there is existing precedent that squarely governs the facts before the officer, the reasonable officer needs to be afforded a certain degree of discretion to make split-second decisions in situations that could put lives, including their own, at risk. Officers must rely on training and should not be punished for doing so.

- *Creating personal financial liability would deter applicants.* If qualified immunity is abolished, qualified applicants will be deterred from becoming a police officer or other public office, coupled with an exodus of experienced officers.

- *Qualified immunity only protects the individual officers—not the government itself.* Qualified immunity does not protect a city from suit for its policies and practices or failure to train. If an individual has a viable claim that the city has a practice of misconduct or failed to train its officers, that claim can go forward irrespective of an individual officers' qualified immunity.

- *The courts have been balanced in denying or granting qualified immunity.*

    - A recent study of more than 200 lower court decisions where qualified immunity was raised as a defense, the court *denied* officers qualified immunity 43% of the time.

    - Despite acknowledgment from strong justices on both sides (Thomas and Sotomayor) of a desire to revisit qualified immunity, the Supreme Court appears content with its current jurisprudence.

- *Without qualified immunity, premiums will become too costly for government entities to maintain.* Those individuals that are injured by clearly improper government action will not be properly compensated. Officers do not have assets to pay for any substantial judgment.

- *Qualified immunity avoids expending substantial litigation costs and resources.* Qualified immunity prevents a plaintiff from being able to make a frivolous allegation against an officer or government official with a hope of finding some evidence during time-consuming discovery. Absent qualified immunity, every time a police officer or government official is sued, they would be subject to extensive personal litigation costs.

- *Departments will not defend officers in egregious cases and courts will not entertain the defense.* In the most egregious examples we have seen, such as out of Minneapolis, qualified immunity will not be available to those officers. The city will not defend officers involved in obvious misconduct and the courts do not have to conduct a qualified immunity analysis. Qualified immunity protects the reasonable police officer, not those whose actions demonstrate complete incompetence.

***

Lastly, the Supreme Court has offered its justifications for the doctrine. First, avoiding "the expenses of litigation" by allowing courts to dismiss suits against officers at early stages in the litigation. Second, requiring officials to respond to such litigation can divert official

energy from pressing public issues. Third, the Court worries that the threat of litigation would deter able citizens from acceptance of public office.

4. What are the courts saying about qualified immunity?

- Only 5 cases have made it to the Supreme Court since 2015. In all 5 cases, officers were granted qualified immunity, including 9-0 and 8-1 decisions.

- The Court had multiple opportunities to revisit the qualified immunity doctrine in 2020. At one point, it had ***13*** different petitions where qualified immunity was at issue. ***The Court denied every petition.***

- Courts are concerned that the threat of lawsuits could chill lawful law enforcement conduct. As the Supreme Court said in a recent opinion: "[T]he doctrine of qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions." *Ashcroft v. Al-Kidd*, 131 S.Ct. 2074 (2011).

5. What are Congress and state legislatures saying about qualified immunity?

Federal:

- H.R. 7085 - "Ending Qualified Immunity Act" – introduced by Senators Markey, Sanders, and Warren in July 2020

- H.R. 8979 – "Qualified Immunity Abolition Act" – introduced by Rep. Hall in December 2020

- S. 40356 – "Reforming Qualified Immunity Act" – introduced by Senator Braun in June 2020

- H.R. 7120 – "George Floyd Justice in Policing Act of 2020" – introduced by Rep. Bass in June 2020

States:

- **Connecticut (HB 6004)**

    - Creates a new state civil cause of action for people to seek recourse when an officer deprives them of the equal protection or privileges and immunities of Connecticut law.

- Eliminates governmental immunity as a defense but ***does not*** explicitly address qualified immunity.

- **Colorado (SB 217)**

  - Colorado is the first state to specifically negate the availability of qualified immunity as a defense through legislation. However, it only applies in specific circumstances.

  - The law permits individuals to bring claims in ***state*** court against law enforcement officers who violate their ***state*** constitutional rights under Colorado law.

  - In these cases brought in state court, qualified immunity is not available as a defense.

  - SB 217 does ***not*** impact cases brought in federal court alleging violations of the U.S. Constitution (i.e. Fourth Amendment).

  - **Key Provision:**

  - Section (4) states that a peace officer's employer is required to indemnify the officer for any liability resulting from a judgment or settlement entered against the officer from a claim arising pursuant to the new law.

  - However, the law contains an exception to the indemnity requirement that states: "If the peace officer's employer determines that the officer did not act upon a good faith and reasonable belief that the action was lawful, then the peace officer is personally liable and shall not be indemnified … for five percent of the judgment or settlement or twenty-five thousand dollars, whichever is less."

  - **The Colorado legislation thus creates a $25,000 personal liability ceiling for officers found liable for *state* constitutional violations.**

- **New Mexico – New Mexico Civil Rights Act**

  - Effective July 1, 2021, ends qualified immunity for government workers, including police officers.

  - This Act applies to state cases. A claim under this law can be brought in any New Mexico district court for the deprivation of any rights, privileges, or immunities secured by the Bill of Rights of the Constitution of New Mexico.

- The prevailing party may receive reasonable attorney fees.

- The prevailing party may receive punitive damages if punitive damages are prescribed by law or available under common law for their claims. However, claims brought under this Act must be brought *exclusively* against a public body and that body will be held liable for conduct of individuals acting on its behalf.

D. ***Brady*** **Task Force**

At the direction of President Yoes and the Executive Board, this Task Force is charged with creating a recommended policy to address *Brady* requirements and the duty of law enforcement agencies to identify and provide to the prosecution any exculpatory material that would have a reasonable probability of altering the results. The goal of the Task Force is to create a menu of best practices. These recommendations are guidelines to provide law enforcement with examples of circumstances or conduct that may implicate *Brady*.

The Task Force is also charged with outlining practices and procedures to address what happens to an officer when he or she is placed on the *Brady* list.

Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, and collective bargaining agreements that must be considered. Where applicable, the best practice is to make any *Brady* policy subject to collective bargaining and a part of the agreement. The National FOP encourages all local law enforcement agencies to adopt model *Brady* policies.

In *Brady v. Maryland*, 373 U.S. 83 (1963), the United States Supreme Court held that the "prosecution has a constitutional duty to disclose evidence favorable to an accused when such evidence is material to guilt or punishment." That includes evidence that may affect the credibility of government witnesses such as police officers. The Court extended the "*Brady*" rule in *United States v. Giglio*, 405 U.S. 150 (1972) to include evidence that could be used to impeach a witness.

Those cases, however, do not impose an affirmative obligation on the prosecutor to inspect personnel files or other sources to determine if such evidence exists, unless the prosecutor has knowledge that such evidence exists in relation to a particular case. In addition, the *Brady* and *Giglio* cases do not mandate the creation of any so-called "*Brady* List" or "*Brady/Giglio* List" and do not even reference such a list.

Nevertheless, the *Brady/Giglio* decisions and subsequent rulings have made it a duty of all law enforcement agencies to (1) identify and provide to the prosecution any exculpatory evidence and *Brady/Giglio* material that would have a reasonable probability of altering the results in a trial, or any material that could reasonably mitigate the sentencing of a defendant and (2) any material relevant to the credibility of government witnesses, including, but not

limited to, police officers. It is the policy of the Department to follow *Brady* disclosure requirements consistent with the law.

E. Law Enforcement Related Legislation Task Force

1. Police Reform Legislation

At our last Legal Conference in Las Vegas, President Yoes instructed us to create a database on the pending and inactive legislation of the various states relative to police reform. Thus, we are providing the following as a resource.

NATIONAL CONFERENCE OF STATE LEGISLATURES DATABASE

The National Conference of State Legislatures (NCSL) has a database on its website that tracks legislative responses for policing. This database provides information on law enforcement legislation that has been introduced in the 50 states and the District of Columbia since 2015. Information regarding bills for the current year is updated daily. The database can be used by searching legislation by state, topic, keyword, year, status, or primary sponsor. Policing topics include oversight and data, training, standards and certification, use of force, technology, policing alternatives and collaboration, executive orders, and other timely issues.

After applying the desired search options, the database provides the applicable legislation per state. The results page shows the total number of bills across the total number of states under your search. The results page provides the name of the bill, the status, the date of last action, the authors, the topic, the associated bills, and a summary. A link to the full text of the bill is available as well as a link to the history of the bill.

Database: https://www.ncsl.org/research/civil-and-criminal-justice/legislative-responses-for-policing.aspx

STATISTICS

When searching all topics regarding legislative responses for policing across all states in 2020, there are **381 pending bills** across 17 states and **89 enacted bills** across 27 states. Training, standards, and certifications has 104 pending bills across 14 states. Close behind, use of force has 95 pending bills across 12 states and oversight and data has 86 pending bills across 13 states. Additionally, 27 bills are pending in regard to police technology in 2020 and only 16 bills are pending on policing alternatives and collaboration. The statistics on the bills enacted in 2020 are as follows:

- 35 bills for use of force across 16 states
- 36 bills for training, standards, and certification
- 13 bills for technology across 8 states
- 4 bills for policing alternatives and collaboration
- 30 bills for oversight and data across 15 states

When searching all topics regarding legislative responses for policing across all states in 2021, there are **1601 pending bills** across 44 states and **50 enacted bills** across 16 states. The topic of standards has the highest amount of pending bills with 272 bills across 36 states. Close behind, use of force has 260 pending bills across 36 states. Notably, there are 217 bills for officer safety and wellbeing across 36 states and 202 bills for investigations and discipline across 37 states. The topics with the least amount of pending bills include policing alternatives and collaboration with 99 pending bills and decertification with 73 pending bills. The statistics on the 50 enacted bills in 2021 are as follows:

- 9 bills for use of force across 6 states
- 13 bills for training across 7 states
- 4 bills for technology across 4 states
- 9 bills for standards across 6 states
- 9 bills for policing alternatives and collaboration across 7 states
- 10 bills for oversight across 6 states
- 8 bills for officer safety and wellbeing across 6 states
- 6 bills for investigation and discipline across 5 states
- 6 bills for employment and labor across 6 states
- 5 bills for decertification across 4 states
- 6 bills for data and transparency across 5 states
- 7 bills for certification across 6 states

Use of Force and Discipline

The legislation regarding use of force and discipline regulates the type and amount of force a police officer uses as well as the investigations or procedures for an officer's discipline. Use of force legislation includes legislation on deadly force, excessive force, less lethal force, duty to intervene, and duty to report. This legislation also provides for the legal duties and liabilities of officers which include changes to qualified immunity, and regulation of specific types of force such as chokeholds or tear gas. Next, investigations and discipline legislation include legislation regulating departmental and independent investigations into critical incidents, mandated disciplinary action, disciplinary procedures, and authorized disciplinary actions and provisions restricting or providing access to disciplinary records.

For example, in Utah, the Peace Officer Use of Force Standards bill (UT S 106) was enacted on March 17, 2021. This bill addresses statewide use of force standards for peace officers and requires the Peace Officer Standards and Training Council to establish minimum use of force standards and to consider changes to the standards based on an annual review. It also requires peace officers and law enforcement agencies to comply with and enforce the statewide minimum use of force standards. Furthermore, in California, a pending bill with the Assembly Public Safety Committee (CA A 718) requires a law enforcement agency or oversight agency to complete an investigation into an allegation of the use of force resulting in death or great bodily injury, sexual assault, discharge of a firearm, or dishonesty despite the peace officer's or custodial officer's voluntary separation from the employing agency.

Additionally, the bill requires the investigation to result in a finding that the allegation is either sustained, not sustained, unfounded, or exonerated. The bill also requires an agency, other than an officer's employing agency, to disclose its findings with the employing agency no later than the conclusion of the investigation.

Training, Standards, and Certification

The legislation regarding training, standards, and certification regulates the officer's qualifications and conduct. Training legislation includes legislation that requires initial training for certification and reoccurring training of topics including use of force, de-escalation, interactions with individuals with serious mental illness, bias reduction, and responses to certain offenses such as domestic violence, sex crimes and hate crimes. Standards legislation includes legislation that requires department adoption of policies, provides for review of department policies or establishes statewide standards or guidance for law enforcement officer conduct or operations. Lastly, certification legislation includes legislation that requires new certifications or changes existing certification requirements.

For example, in July 2020, Connecticut enacted the Police Accountability bill (CT H 6004) which sets standards for officer's certifications. As such, any sworn state police personnel must be certified by the Police Officer and Training Council. This council has the power, including but not limited to, developing comprehensive state and municipal police training; setting the minimum course of study and attendance required of police training schools; issuing appropriate certification of police officers; and requiring renewal of the certifications.

Technology and Data

The legislation regarding technology and data regulates the use of technology and the method the data is collected and distributed. Technology legislation includes legislation authorizing, regulating, and prohibiting the use of technology for law enforcement purposes, including police-worn body cameras, facial recognition and others. Data and Transparency legislation includes legislation creating or modifying data collection, tracking and reporting, and recording transparency requirements.

For example, a 2021 bill is pending in Florida (FL S 452) relating to law enforcement officer body and vehicle dash cameras. A law enforcement agency would require its law enforcement officers to wear body cameras and use vehicle dash cameras and would be required to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and vehicle dash cameras as well as the data recorded by the technology. The policies and procedures must include general guidelines for the proper use of body cameras and vehicle dash cameras; limitations on which law enforcement officers are permitted to wear body cameras and use vehicle dash cameras; and limitations on law-enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras and use vehicle dash cameras.

Policing Alternatives

Policing alternatives and collaboration legislation include legislation authorizing and funding alternative responses for law enforcement, including collaborations with behavioral health, medical and social services professionals. For example, a bill is pending in Indiana (IN H 1526) to contract with mental health providers for the purpose of supplementing existing crisis intervention teams with mental health professionals. This bill requires the mental health professional who is appointed to a crisis intervention team to accompany responding law enforcement or police officers to a call involving a mental health or substance abuse disorder crisis.

Employment & Labor and Oversight

The legislation regarding employment & labor and oversight deals with labor unions and oversight boards. Employment and labor legislation include legislation relating to collective bargaining, employment policies, officer hiring requirements, residency restrictions, diversity hiring provisions, pension penalties and other related topics. Oversight legislation includes legislation authorizing, regulating, or supporting law enforcement oversight bodies, including civilian oversight boards, entities that review or recommend law enforcement policy, and time-limited task forces or study committees.

For example, a 2021 bill is pending in New York (NY A 910) that amends the civil service law in relation to collective bargaining in cities with a population between 139,000 – 145,000 people. The amendment states that all matters relating to discipline of police officers, including but not limited to, matters relating to investigations, hearing procedures, or penalty determination are prohibited subjects of bargaining between the city and the city's law enforcement labor employee organization. These matters are removed from the scope of collective bargaining.

2. Officer Wellness Legislation

In addition to legislation regarding police reform, we are tracking measures promoting officer mental health and wellness. Law enforcement officers are exposed to traumatic calls for service on a daily basis, including child abuse, domestic violence, car crashes, and homicides. Repeated exposure to these stressors and events may be associated with the development of mental illness, such as anxiety, depression, and post-traumatic stress disorder. States are recognizing the need to address mental health barriers for police officers. Because policing is an essential occupation to preserve and protect the law, those who serve in law enforcement deserve proper protection from the mental strain associated with this task. Such protection is being proposed in legislation across the country which focuses on implementing education and training programs as well as creating access to effective treatment and counseling opportunities.

The majority of states have proposed legislation in some capacity regarding police officer wellness and mental health. In 2020 and 2021 combined, approximately 300 bills were

proposed across 42 states for "Officer Safety and Wellbeing." This legislation attempts to mitigate the impact of stress on officers and their families; prevent harm and suicide among law enforcement officers; and establish programs that provide outlets for the officers.

Officer Safety and Wellbeing

Officer safety and wellbeing legislation includes legislation authorizing or encouraging peer counseling initiatives, mental health screening and support for officers, enhanced penalties for crimes against officers and related provisions. For example, there is pending legislation in Illinois to amend the state's Police Training Act (IL H 3167) to establish a Mental Health Coordinator who would be responsible for implementing a program of mental health support and education for law enforcement officers. The Coordinator would create training procedures, create a reference list of medical professionals, and establish a peer support program.

Workers' Compensation

States are proposing changes in the Workers' Compensation system to include post-traumatic stress that has developed as a result of service in the department or unit. For example, in Kansas post-traumatic stress disorder is added under "personal injury" for first responders. First responders include firefighters, law enforcement, or medical service providers. Other states, like New York, have pending legislation that establishes a presumption that when police officer or emergency personnel is diagnosed with post-traumatic stress disorder it is the result from service in the line of duty, and therefore is compensable.

Establishing Mental Health Programs

Many states are proposing legislation to establish mental health programs. These programs are meant to provide opportunities for counseling and establish peer support groups. For example, in Oklahoma, proposed legislation requires the Department of Mental Health and Substance Abuse Services to contract for certain support for crisis intervention, such as counseling, for those who are impacted by trauma, cumulative stress, anxiety, addictions, death, and suicide attempt. New York's proposed legislation includes establishing a peer support group with peer counseling techniques for mental illness as well as family support services, domestic abuse, and childcare.

Some of the mental health programs include receiving appropriate training in identifying the symptoms of mental illness and creating a list of recommended agencies or organizations that an officer can access help. For example, in Illinois, proposed legislation would amend the state's Police Training Act to establish a Mental Health Coordinator who would assist in creating training procedures, selecting medical professionals for a reference list, and creating a peer support program. As another example, New Mexico's proposed legislation suggests hiring a licensed psychologist for every law enforcement agency in the state.

This subset of proposed legislation often includes mental health training and education. Pending legislation provides for increased and uniform training requirements and include "continuing" and "ongoing" education.

Mental Health Assessments

A few states are proposing legislation which would require officers to undergo mental health assessments. This legislation is seeking to establish a psychological fitness standard for law enforcement officers. For example, Indiana's pending legislation requires the Law Enforcement Training Board to establish psychological fitness for duty, policies, procedures, and standards. This subset of proposed legislation requires a mental health evaluation to become certified and then subsequent evaluations on a periodical basis.

NATIONAL CONFERENCE OF STATE LEGISLATURES DATABASE

"Officer Safety and Wellbeing" legislation is tracked at the National Conference of State Legislatures (NCSL) website. The NCSL's website has the Legislative Responses for Policing-State Bill Tracking Database which provides information on law enforcement legislation that has been introduced in the 50 states and the District of Columbia from 2015 to the present.

Link: https://www.ncsl.org/research/civil-and-criminal-justice/legislative-responses-for-policing.aspx

***

Proposed legislation nationwide is seeking to address the barriers for law enforcement officers to get appropriate help for their mental health. Policing is considered a high-risk profession for the development of mental health problems because of the traumatic events that officers experience throughout their career. Proposed legislation regarding officer's wellness and mental health are preventative efforts being offered to protect law enforcement from the mental and emotional strain associated with their job.

IV. COVID-19 VACCINATION MEMORANDUM

A mandatory COVID-19 vaccine policy can be required for public employees, including police officers. The Equal Employment Opportunity Commission ("EEOC") is responsible for enforcing federal anti-discrimination laws in the employment context. The EEOC issues guidance on how employers can navigate new laws and regulations in the workplace. So far, the EEOC has issued two guidance letters titled, *Pandemic Preparedness in the Workplace and the Americans with Disabilities Act Guidance* and *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*. In pertinent part, these letters state that employers can require employees to be vaccinated. They also answer questions regarding COVID-19, the vaccine, and how they affect the workplace.

From the beginning of the pandemic, the EEOC has recognized that COVID-19 meets the higher threshold "direct threat standard," which allows employers to conduct more extensive medical inquiries and controls than normal. As the EEOC noted in its *Pandemic Preparedness in the Workplace* letter, the threat of COVID-19 supports a finding that "a significant risk of substantial harm would be posed to having some with COVID-19, or symptoms of it, present in the workplace."

The Supreme Court has long upheld the rights of states to enact compulsory vaccination laws. Dating back to 1905, the Supreme Court in *Jacobson v. Massachusetts* determined that a law requiring smallpox vaccinations during an epidemic did not violate liberty interests. The Court explained "that in every well-ordered society charged with the duty of conserving the safety of its members, the rights of the individual in respect of his liberty, may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand."

Precedent from prior pandemics, including smallpox and the H1N1 swine flu, show that employers were given some freedom to require vaccines. For example, when the swine flu vaccine was produced in October of 2009, New York created a state-wide mandate to require that all health care workers who were in direct contact with patients get the seasonal and H1N1 vaccine. Additionally, all fifty states have required that "parents vaccinate their children against various diseases, including polio and measles, as a prerequisite to enrolling them in public school."

Therefore, a mandatory vaccine policy is not an entirely new issue. However, whether the employer should require such a policy requires understanding how a policy would implicate other legal requirements.

Mandating a vaccine for police officers protects the officers and the public. Officers face significant risk without protection of a vaccine because of the exposure and physical contact they have with the public. Officers getting vaccinated means a reduction of COVID-19 associated sickness or death in police departments, which in turn, preserves services critical for the overall functioning of society. The ability of essential workers to remain healthy helps to minimize social and economic disruption.

Police officers are at a higher occupational risk for exposure by virtue of their duties. Their job responsibilities do not allow them to work from home and they may be unable to comply with social distancing and mask guidelines. Thus, preventing the transmission of the virus in officers may reduce transmission to others.

Any mandatory vaccine policy must still comply with Title VII of the Civil Rights Act and the Americans with Disabilities Act.

V. POLICE STATISTICS: TOTAL NUMBER OF FULL-TIME OFFICERS, ARRESTS, AND OFFICER-INVOLVED SHOOTINGS

A. Employment & Arrest Statistics

There are three national sources that collect law enforcement employment data: (1) the Uniform Crime Report, a voluntary report conducted by the FBI; (2) the Bureau of Justice Statistics' Census of State and Local Law Enforcement Agencies; and (3) the Census Bureau's Annual Survey of Public Employment and Payroll. All the information is voluntarily provided by law enforcement agencies. The FBI and Census Bureau's reports are updated yearly and the Bureau of Justice Statistics' report is updated every four years. The FBI also collects information on persons arrested and this information is also updated yearly.

1) **Total number of law enforcement officers.**
   According to the National Law Enforcement Officers Memorial Fund (NLEOMF), there are about 800,000 sworn officers in the United States. It is unclear if this includes part-time sworn officers.

2) **Total number of Black officers.**
   According to the Bureau of Justice Statistics, in 2016 11.4% of local police officers were Black.

3) **Total number of female officers.**
   According to the NLEOMF, about 12% (96,000) of the 800,000 sworn officers are female. The Bureau of Justice Statistics similarly found that about 12% of full-time sworn officers in local police departments were female.

4) **Total number of arrests and arrests by race.**
   According to the FBI's Uniform Crime Report, there were 10,085,207 arrests in 2019. Approximately 69.4% (4,729,290) of those arrested were white, while 26.6% (1,815,144) of those arrested were Black. For context, as of April 1, 2020, Black people made up approximately 13.4% of the U.S. population (according to the U.S. Census Bureau).

B. Officer-Involved Shootings

The *Washington Post* has kept a record of fatal police shootings since January 1, 2015. The following charts summarize the *Post*'s data from 2015–2019.

NUMBER OF FATAL OFFICER-INVOLVED SHOOTINGS

YEAR	SHOOTINGS	POPULATION
2015	995	320,635,163
2016	963	322,941,311
2017	987	324,985,539
2018	998	325,687,501
2019	999	328,239,523

NUMBER OF FATAL OFFICER-INVOLVED SHOOTINGS, BY RACE

YEAR	WHITE	BLACK	HISPANIC	OTHER	UNKNOWN
2015	497	258	179	38	29
2016	468	234	160	42	58
2017	459	224	179	44	80
2018	454	229	165	40	103
2019	403	250	162	41	143

FATAL OFFICER-INVOLVED SHOOING MEASURED AGAINST POPULATION (2019)

CATEGORY	WHITE	BLACK	HISPANIC
Fatal Officer Shootings	403	250	162
Population	250,522,190	44,075,086	60,572,237
Shootings Per Population	0.00000161	0.00000567	0.00000267
Rate Compared to White Population	1.0	3.5	1.6

VI. NATIONAL FOP CHARITABLE REGISTRATIONS

We prepare and submit the Charitable Registration renewals with twenty-four (24) states. For fiscal year ending 2020, this office will prepare the necessary renewals upon receipt of the 2019 tax returns. The states with a due date for 2020 either do not allow extensions or allow charities to file late.

Still to process for fiscal year ending 2020 are:

1. North Carolina, due 11/15/20.
2. Ohio, due 11/15/20. Auto extension to match IRS.
3. Illinois, due 12/30/20.
4. New Jersey, due 12/30/20.
5. Kansas, due 12/31/20.
6. Tennessee, due 12/31/20.
7. Florida, due 1/5/21 (Registration).
8. Michigan, due 1/31/21.
9. Colorado, due 2/15/21.
10. Maryland, due 5/15/21.
11. Minnesota, due 5/15/21.
12. Pennsylvania, due 5/15/21.
13. Florida, due 5/15/21 (06/2020 Financial).
14. South Carolina, due 5/15/21 (06/2020 Financial).
15. Kentucky, due 5/15/21
16. Virginia, due 5/15/21.
17. Connecticut, due 5/31/21.
18. Oklahoma, due 9/5/21.
19. Alabama, due 9/29/21.
20. New York, due 11/15/21.
21. South Carolina, due 11/15/21 (2021 Registration).
22. West Virginia, due 12/8/21.
23. Rhode Island, due 12/27/21.
24. Georgia, due 4/2/22.

*** *Arizona, California, and New Mexico do not require the FOP to register.*

VII. CONTRACT REVIEW AND NEGOTIATION

When we review a contract, we do so by putting ourselves in the shoes of the Grand Lodge and/or its members. We review not only the legal terms and provisions but also the practical and economic aspects of the contract as it may affect the individual members. We also perform a background search on the contracting party to ensure that the Grand Lodge enter into contracts with reputable and or established parties. The following are examples of contracts we have reviewed and/or negotiated:

a. Your Hearing Network Promotion and License Agreement to adopt hearing discount plans for members;

b. 911 Media Publishing Agreement to publish the National FOP journal online in order to improve accessibility to information for members;

c. ChooseHealthy Agreement to provide members access to health and well-being programs and services;

d. Coridco Memorandum of Understanding to establish a collaborative relationship that works towards providing proactive and preventive wellness support to members;

e. Lighthouse Health and Wellness Memorandum of Understanding to establish a collaborative relationship that works towards providing services for members suffering from PTSD, anxiety, depression, and substance abuse;

f. LIFEXEC Memorandum of Understanding to make available software and software services to members;

g. Resort Rental LLC, Affinity Partner Royalty Agreement to make available certain travel benefits to members;

h. Boulder Crest Foundation Memorandum of Understanding to establish a collaborative relationship that works towards improving the mental, physical, and emotional health of members.

VIII. INTRODUCTION OF NEW AWARDS

In 2021, the NFOP introduced two new awards as a means of recognizing deserving attorneys dedicated to the service of the FOP and its members. The two awards, (1) FOP Attorney Lifetime Achievement Award and (2) FOP Attorney of the Year Award, will be awarded annually at either the midterm Board Meeting or at the National Conference.

A. FOP Attorney Lifetime Achievement Award

The FOP Attorney Lifetime Achievement Award was established as a means of recognizing an individual attorney for their service and dedication in their representation of the law enforcement community and FOP members over the course of their legal career. This award serves as an acknowledgement of a career of service marked by outstanding legal representation of the FOP and its members. It is an honor that is given annually, either at the midterm Board Meeting or at the National Conference.

B. FOP Attorney of the Year

The FOP Attorney of Year Award was established as a means of recognizing an individual attorney for their service and dedication in their representation of the law enforcement community and FOP members over the course of a given year. This award serves as an acknowledgement of outstanding legal representation of a FOP member or group of members. It is an honor that is given annually, either at the midterm Board Meeting or at the National Conference.

IX. SPEAKING ENGAGEMENTS

We are constantly working to engage leaders and facilitate open discussion on the interaction of law enforcement and communities. In 2020 – even during a time when interactions were so limited – we took our engagement to a new level. Below are a sampling of 2020 speaking engagements by Larry H. James, General Counsel to the National FOP.

- *Virtual Plenary Session on Police Disciplinary Arbitrations: The Problem or the Solution?* – American Bar Association Labor and Employment Law Section 14th Annual Program (November 13, 2020)
- *Civil Rights: Modern Quandaries of Law Enforcement* – Federalist Society 2020 National Lawyers Convention (November 11, 2020)
- Qualified Immunity under the United States Constitution and Official Immunity under New Hampshire Law – The New Hampshire Supreme Court Society (October 28, 2020)
- *Protecting Police: Is Qualified Immunity Unjust?* – Federalist Society Cornell Student Chapter (October 1, 2020)
- *Police Unions, Practically Speaking – Federalist Society Labor and Employment Practice Group, Teleforum Presentation (July 21, 2020)*
- *Zoom Meeting with the Atlanta Community (July 2020)*
- *Tim May Podcast (June 9, 2020)*

We continued that trend in 2021 with the following speaking engagements:

- Courthouse Steps Oral Argument Teleforum: Lange v. California – Federalist Society (February 24, 2021)
- Columbus Metropolitan Club Forum – *Police: To Serve and Protect* (June 2, 2021)
- *Public Sector Labor Law Seminar: Police Modernization* – Ohio State Bar Association (June 18, 2021 – Christopher R. Green, Associate General Counsel)

X. FOP JOURNAL ARTICLES

We submit articles to the FOP Journal for publication on a monthly basis. As of the date of this Report, topics for 2021 include:

- Arbitration Recommendations – January 2021
- Do I Need a Will? – February 2021
- Mandating the COVID-19 Vaccine – February 2021
- 2021 National Fraternal Order of Police Legal Counselor Seminar – February 2021
- Lange v. California Amicus Brief – March 2021
- Brady Recommendations – April 2021
- Civilian Review Boards – May 2021
- Officer Wellness Legislation – June 2021
- *Fowler v. Irish* Amicus Brief – July 2021
- First Amendment Rights of Law Enforcement Officers – August 2021
- Qualified Immunity Update – September 2021

XI. 2020 FOP LEGAL COUNSELORS SEMINAR

Planet Hollywood, Las Vegas
March 5–6, 2020

Overview and Update
National FOP President Pat Yoes

Fitness for Duty
Michael Coviello

Medical Marijuana and Its Impact on Law Enforcement in the Workplace
John Snyder

Medical Marijuana and Its Impact on Law Enforcement in the Workplace; Special Concerns for Law Enforcement Officers Based Upon Federal Law; and Arbitration Decisions Regarding Marijuana Impacting Law Enforcement & Public Sector Labor
John Sauter

Arbitrations, Factfinding, Interest and Discipline
Michael Coviello, Gwen Callender

The State of Qualified Immunity and the Everchanging Landscape
Rob Buchbinder, Chris Green

The Use of Body Cameras, Dash Cameras, Drones, Public and Private Cameras
Rob Buchbinder, Chris Green

Privacy Information of Police Officers and How to Protect It: The Ongoing Trend for Public Information Requests and the Department's Dilemmas as to What and When to Release Such Information
John Kautzman, Leo Blackwell, Andy Duncan

The Legal Plan: Nuts and Bolts Regarding Enrollment, Marketing Administrators and Claims Administrators
Pat Fioretto

Creating a List of Subject Matter Experts and Individual Strategies to Respond to Crisis Situations and Interact with the Press
Larry James, Lance LoRusso

XII. 2021 FOP LEGAL COUNSELORS SEMINAR

Caesar's Palace, Las Vegas
March 18–19, 2021

Overview and Update
National FOP President Patrick Yoes

Policy Changes in a Nation of Police Reform
John Kautzman, Leo Blackwell

Ethics
Larry James, Chris Green

Collective Bargaining: How to Prepare for Contract Negotiations, Assembling Your Team, and Enforcing Your Contract – Mediation and Arbitration
Michael Coviello

Staying Well in Tough Times: How the FOP Is Keeping a Spotlight on Wellness
Sherri Martin

Emotional Intelligence Quotient (EIQ) Training Overview
Gwen Callender, Jack Slavinski

Updates on Task Force Initiatives: Qualified Immunity, Civilian Review Boards, Arbitration, and Collective Bargaining; and Reviewing Updates of State Indemnification Statutes
Larry James, Chris Green

Use of Social Media to Defend LEOs and Educate the Public You Serve
Lance LoRusso

XIII. CRABBE, BROWN & JAMES, LLP CONTACT INFORMATION

The following is contact information for the current active FOP counsel in our office:

General Counsel
Larry H. James, Esq.
FOP General Counsel
Crabbe, Brown & James, LLP
500 South Front Street, Suite 1200
Columbus, Ohio 43215
Tel: (614) 229-4567 Cell: (614) 581-1125
Fax: (614) 229-4559
Email: ljames@cbjlawyers.com
Assistant: Robert Lewis
Tel: (614) 229-4519
Email: rlewis@cbjlawyers.com

IRS, DOL, Tax, Trademark & Contracts
Eileen R. Bower, Esq.
FOP Associate Counsel
Crabbe, Brown & James, LLP
500 South Front Street, Suite 1200
Columbus, Ohio 43215
Tel: (614) 229-4502 Cell: (614) 468-3178
Fax: (614) 229-4559
Email: ebower@cbjlawyers.com
Assistant: Sherry Paniccia
Tel: (614) 229-4576
Email: smcnamer@cbjlawyers.com

Employment Matters
Natalie P. Bryans, Esq.
FOP Associate Counsel
Crabbe, Brown & James, LLP
500 South Front Street, Suite 1200
Columbus, Ohio 43215
Tel: (614) 229-4538
Fax: (614) 229-4559
Email: nbryans@cbjlawyers.com
Assistant: Carol Stewart
Tel: (614) 229-4503
Email: cstewart@cbjlawyers.com

Amicus Filings
Christopher R. Green, Esq.
FOP Associate Counsel
Crabbe, Brown & James, LLP
500 South Front Street, Suite 1200
Columbus, Ohio 43215
Tel: (614) 229-4563
Fax: (614) 229-4559
Email: mplaney@cbjlawyers.com
Assistant: Debbie Wyche
Tel: (614) 229-4578
Email: dwyche@cbjlawyers.com

Insurance Matters
Matthew R. Planey, Esq.
FOP Associate Counsel
Crabbe, Brown & James, LLP
500 South Front Street, Suite 1200
Columbus, Ohio 43215
Tel: (614) 229-4514 Cell: (614) 309-4852
Fax: (614) 229-4559
Email: mplaney@cbjlawyers.com
Assistant: Debbie Wyche
Tel: (614) 229-4578
Email: dwyche@cbjlawyers.com

Paralegal – Contract & Trademark Renewals and Monitoring
Dustin Zink
FOP Paralegal
Crabbe, Brown & James, LLP
500 South Front Street, Suite 1200
Columbus, Ohio 43215
Tel: (614) 229-4483
Fax: (614) 229-4559
Email: dzink@cbjlawyers.com
Assistant: Carol Stewart
Tel: (614) 229-4503
Email: cstewart@cbjlawyers.com