



Fraternal Order of Police

BlueNote

Official Publication of the North Carolina State Lodge

Volume 3, Issue 3

www.ncfop.org

May/June 2013

Book Review of *When Cops Kill*

Review by Richard Hattendorf
North Carolina FOP State Counsel

Over the past eighteen (18) years I have represented approximately 65 law enforcement officers who were involved in duty related shooting incidents. The experience can be incredibly stressful and unpleasant. An officer or deputy should not be subjected to the post-incident investigative process without the assistance of legal counsel. A colleague of mine has written a book which both discusses the issues of an officer-involved shooting and dispenses advice and encouragement.

When Cops Kill, by Lance LoRusso, is a thorough and comprehensive review of problems and issues which confront law enforcement professionals who have been involved in a duty related shooting. The author addresses such topics as media issues,

Continued on P. 2

Inside This Issue

Chaplain's Corner with NCFOP Chaplain, Phil Wiggins.

Per Capita Increase

Book Review of *When Cops Kill*

Officer Wind and the FOP prevail before the NC Court of Appeals in Personnal Records Case

The Grand Lodge FOP Needs You

Awards Committee Awards

Legal Aid Testimony from Grover M. King

A message from FOP Vice President, John Byrd

Note from Chairman of State Trustees, Phillip Ferguson

Lodge 81 announces winner of it's Spring Lawn Tractor Raffle

Index

Directory	2
Lodge News	3
Legal Aid	7



Pictured left to right, Donald B. Penix, Jr., Mary Ann Penix, and Donald B. Penix, Sr. Proud father Don Penix pins the Sergeant Badge on his son, Donnie while proud mother watches on. Donnie was promoted to Sergeant in March by the Charlotte-Mecklenburg Police Department. He has been a member of Lodge 9 FOP since rookie school some 15 years ago and currently is a Trustee for Lodge 9.

The Voice of Law Enforcement

North Carolina
Fraternal Order of Police

1500 Walnut Street
Cary, NC 27511
(O) 800-628-8062
(F) 919-461-4958

Email
NCFOP@nc.rr.com

Web Site
www.ncfop.org

President
Randy Hagler
rlhncfop@bellsouth.net

Immediate Past President
Terry Mangum
marman@frontier.com

Vice President
John Byrd
jrbsenior@charter.net

Secretary
Don Penix
dbp1164@aol.com

Treasurer
Doris Kirby
Dorisk@centurylink.net

2nd Vice President
Ron "Duck" Wyatt
ltronwyatt@yahoo.com

Sergeant-At-Arms
Robert Gaddy
rgaddyjr@yahoo.com

Chaplain
Phil Wiggins
prwiggins@summitrdu.com

National Trustee
Dennis McCrary
dmccraryfop@aol.com

Chariperson of Trustees
Phillip Ferguson
whydonturun@yahoo.com

A Note from Editor In Chief

By Terry Mangum

I would like to thank all who have submitted articles for our BlueNote publication since August 2012. Your contributions are what make this newsletter interesting and informative. Please keep up the good work. If you and your lodge have not shared an article, please see that we hear from you soon.

To allow you plenty of time to compose an article or two for the remainder of this year, I am providing the due dates.



Terry Mangum
Immediate Past President
marman@frontier.com

Due Dates For Submitting Articles

July/August issue: Due June 21

September/October issue: August 23

November/December issue: October 25

I hope you have been enjoying the BlueNote. I would, however, like to hear from you on ways we can improve our publication.

If I may be of assistance to you, or if you have any questions, concerns, or comments, please contact me. As always, I am here to serve you and our membership.

When Cops Kill Cont'd...

Continued from P. 1

investigative interviews, counseling and family issues, legal consequences and relationships with attorneys and fellow officers. Despite the seriousness of the topics, the book is interesting, optimistic and an "easy read."

I recommend When Cops Kill for all law enforcement professionals and attorneys who represent them.

The author, Lance LoRusso is a former police officer and is now a practicing attorney in the Atlanta area. He represents members of the FOP and is active in the organization. Articles and comments by Lance LoRusso may be viewed at his law enforcement blog, Bluelinelawyer.com.

The book is available for purchase on Amazon.com. All profits will be donated to law enforcement and military charities.

The Grand Lodge FOP Needs You

by Dennis McCrary
NC National Trustee

August 12-15 of this year will mark a very important time in the Fraternal Order of Police. Delegates from across the country will meet in Cincinnati to determine who will lead the largest law enforcement organization in the country for the next two years.

They will also determine how much it will cost each officer to be a member, legislative priorities for the next two years, positions on gun control and many other important decisions. We need each member to let their local and

Continued on P. 6



Constitution and By-laws Compliance Committee

Chairman Carl Pope

The Constitution and By-laws/Compliance Committee is here to assist you and your lodge. Below is a listing of your Committee members and the Local Lodges we service. If you need assistance or have any questions, please contact your Committee representative.

Chairman Carl Pope: Lodges 26, 1, 2, 23, 46, 64, 74, 80, 85, 91, and 92.

Tony Geiger: Lodges 10, 8, 14, 33, 50, 54, 65, 71, 77, 82, 88, and 93.

Mike Hawkins: Lodges 59, 5, 6, 9, 24, 47, 53, 62, 70, 76, 81, and 87.

Kevin Hornaday: Lodges 96, 18, 19, 40, 52, 58, 68, 73, 79, and 84.

Ralph Southerland: Lodges 41, 16, 36, 51, 55, 67, 72, 78, 83, 89, and 95.

The following information should be useful if you have not already obtained your lodge Articles of Incorporation and Tax ID number.

Articles of Incorporation:

<http://www.secretary.state.nc.us/corporations>

Review the information relating to Non-profit organizations. Then follow the links on this web site and complete the incorporation process for your lodge. Lastly, make sure a copy is sent to the FOP State Office.

Tax ID number:

<http://www.irs.gov/pub/irs-pdf/fss4.pdf>

Complete the process and make sure you notify the FOP State Office of your Tax ID number. Once completed your EIN number will be posted on fop.net.

And finally, do not forget to file your taxes.

A Note From Vice President

By John R. Byrd Sr.

Brothers and Sisters,

I hope this edition of the BlueNote finds everyone doing well. These are some troubled times we are living in Brothers and Sisters. The events of this past week with the bombings at the Boston Marathon can attest to that. The world of our youth is long gone, never to return I'm afraid. The loss of life of another one of our Brothers trying to arrest the suspects is just another reminder of the risk inherent in this career. Why do we do it every day, day after day? It is certainly not for the money. It is because it's a just and righteous calling that God has ordained in the Book of Romans, "Blessed are the peacemakers for they shall inherit the earth". Please take the opportunity this next month to attend one of the many memorial services that honor our fallen Brothers and Sisters, whether it be a Local, State or National Service. If you have never been to the National Service and seen the candlelight vigil, it is truly something to behold. So take a moment this May 15th to remember someone who has given his or her life in the line of duty. Take that moment and thank God there are still men and women willing to sacrifice themselves for their fellow man.

I want to once again thank Charlotte Lodge #9 for hosting this past Spring Board Meeting. Once again they did an outstanding job. The hospitality room and the meal at the Lodge that Saturday night were excellent, keeping with the level of excellence we have come to expect from this group.

As always I am here to serve you. You can call me anytime at 336-504-8173 or email me at jrbseior@charter.net if I can be of assistance to you or your lodge in anyway.



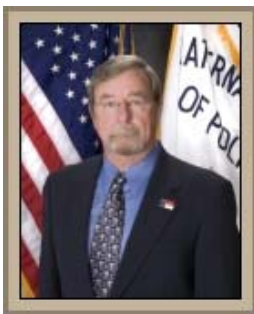
John R. Byrd Sr.
Vice President
jrbseior@charter.net

Per Capita Increase

By Donald B. Penix
State Secretary

By this time, everyone should be aware that the State Lodge Per Capita has gone up from \$5.00 to \$25.00 for each active member and each affiliate member. The total amount per person that will need to be in the State Office by October 15, 2013 will be \$75.50. All per capita payments to the National Lodge are due in the National Office on November 1, 2013 along with the yearly \$25.00 Administrative fee for the National Lodge. Also, your Lodge must send in the yearly fidelity bond payment of \$50.00 to the State Lodge. This fidelity bond covers your Executive Board and protects your Lodge monies in the event of theft by a board member.

The reason I am writing about this is because most Lodges do not charge enough dues per year to cover this increase. Now is the time to raise your dues so that you will be able to make this adjustment without having to take money from the treasury. Lodge dues in North Carolina range from \$65 to \$130. By raising your lodge dues you may lose a few members, but the members you lose will be the ones actually losing especially when a legal issue comes up. I do not know how many times I have heard someone ask, "If I pay my dues now, will I be covered?" No. And remember, if the State Lodge is paying your legal bills and you do not pay your dues, your legal aid coverage ceases and you are responsible for paying your attorney. At that point if you have lost your job, then we cannot take you back if you are



Donald B. Penix
Secretary
Dbp1164@aol.com

no longer employed in law enforcement.

For a good many of you, this amount seems like a lot of money. Look at it this way – one cup of coffee five times a week will cost you about \$15.00. Most of our Legal

Aid cases run from several hundred to several thousand

Chaplain's Corner

As Law enforcement officers we observe the consuming nature of anger, be it on the job or at times in our homes. Anger can be one of those emotions in which some people dream about ways to get back or



Phil Wiggins
NCFOP Chaplain
prwiggins@summitdu.com

get even with someone that has hurt them. We see it about every day in our profession when anger controls people's thoughts. Some people relish and enjoy their anger. Frederick Bueckner says it clearly: "Of the Seven Deadly Sins, anger is possibly the most fun. To lick your wounds, to smack your lips over grievances long past, to roll over your tongue the prospect of bitter confrontations still to come, to savor to the last toothsome morsel both the pain you are given and the pain you are giving back; in many ways it is a feast fit for a king. The chief drawback is that what you are wolfing down is yourself. The skeleton at the feast is you."

Proverbs 14:17 A quick-tempered man acts foolishly; 16:32 He who is slow to anger is better than the mighty, And he who rules his spirit than he who takes a city.

God Bless,
Phil Wiggins
NCFOP Chaplain

dollars. Your yearly lodge dues do not amount to very much when you consider how much legal representation would cost you if you were not a member of the FOP. We have covered members one week out of rookie school to members ready to retire. We all buy life insurance, car insurance, and home owners insurance and we pay for these policies without question despite the cost. Isn't your job and livelihood just as important?

Message from Chairman of State Trustees

Phillip Ferguson

I want to thank each of you who took time to attend the Spring Board Meeting in Charlotte. Some of you pointed out some errors in the State Level attendance information that I collected; I will correct it before our fall meeting, but to save on printing I will send it by email. Speaking of attendance, please carefully consider what, if any, sanctions you think would be appropriate for local lodges who do not participate at the State level. If you have ideas I would ask that you review our State Constitution and By-laws to ensure your ideas are feasible.

As we approach the time when our per capita assessment will increase it is incumbent upon us as Trustees to impress upon all of our Brothers and Sisters that their investment in the Fraternal Order of Police is a sound one. We must constantly reach out to retain and recruit members by letting them know that our organization provides outstanding service at rock bottom cost. Then we must give of ourselves in order to deliver on our commitment to our members.

This fall we will begin our meeting as a full Board of Directors on Friday evening, a move that puts us in step with our State Constitution and By-laws and which I believe will make us more efficient and effective. If you have ideas, comments, or concerns now, and I mean right now, is the time to voice them. Our Brothers and Sister at the Haywood County Lodge are working hard to prepare for our fall meeting and I'm certain they need to be aware of any needs as soon as possible.

I will not be attending the National Memorial this year as it falls during my Town budget workshop. I am certain that those attending will represent our Order very well. Please take time to honor our fallen

Brothers and Sisters, be it in solitary contemplation or in attendance of one of the many memorials that

will be held in May. Further, I challenge each of you to honor those who have made the ultimate sacrifice in one other way; work hard to keep your name, and the names of your colleagues, off of that wall. Wear your vests, wear your seatbelts, slow down, stay tactically minded, and take care of yourselves physically, emotionally, and spiritually.



Phillip Ferguson
Chairman of Trustees
whydonturun@yahoo.com



WNC Macon Jackson County Lodge 81 announces the winner of its Spring Lawn Tractor Raffle. Seated on tractor is the winner, Mike Langley, who is also the State Trustee for Lodge 81. Presenting the tractor key is Lodge 81 President John Hook (Middle) and Lodge 81 Sgt-at-Arms Al Caiata. The proceeds of this raffle go to the Scholarship Fund, which is used to further the education of active Law Enforcement Officers.

Continued from P. 2

State FOP leaders know their thoughts on all of these topics that will be discussed at the National Conference. I have attended many of these conferences and sometimes decisions are made by a very slim number of votes. Each vote does make a difference and it is very important that you send delegates to represent you when these decisions are being made.

All of the current executive board members of the Grand Lodge FOP have indicated that they are running for reelection. The NC FOP has not taken any formal position on support but at the Southern States Meeting in Alabama in April, that Association did vote to support Chuck Canterbury for president and Patrick Yoes for secretary. A donation of \$500 each was made from the Association funds to the campaign for each of these candidates. No current executive board member has an opponent announced yet that is running against them. I suspect this will change for at least some of the offices. We need to have as many delegates as we can in Cincinnati to support those leaders that are needed to lead us for the next two years.

Just as important as our leaders are the positions

that we take on issues facing our profession and the country. Our benefits and even reputation have been under attack recently as never before. Members of our organization must send clear messages about what we think the solutions to some of these problems should be. Our leaders must have a framework of what type of legislation we should be lobbying hard to achieve. Just as with our leader elections some of our position votes have been decided by a very small number of votes. It is imperative that North Carolina FOP members have a say in these decisions.



Dennis McCrary
National Trustee
dmccraryfop@aol.com

Hopefully your local lodge has already made arrangements to send the delegates you are allowed to the Conference in Cincinnati. There are

no more rooms available at the Millennium Hotel where North Carolina is staying but there are still rooms available in the Cincinnati area. Contact Pam Boeing-Rogers at 513-632-5387 or pboeing-rogers@cincyusa.com to check on room availability. Please take the steps now to make sure North Carolina has a say in the direction the National FOP will head through 2015 and beyond.

Awards Committee Awards

Chairman Phillip Ferguson

It was my great honor to present the 2013 Officer of the Year Award to Channing Austin of the Iredell County Lodge #10 and the Statesville Police Department at our Spring Board Meeting in Charlotte. With Brother Doug Oberbeck of the Outer Banks Lodge #71 as a nominee, Chan had a very worthy competitor for this award.

Chan is respected and recognized within in the Community Service Division of the Statesville Police Department where he works, but more importantly in the community that he serves. Known and appreciated for his strong body of work Chan is kind, generous, hard-working, dependable, loyal, honest, professional, humble, and respectful. At the Statesville Police Department his duties varies daily, but Chan is never without a smile on his face and a task at hand.

Chan has been instrumental in the development and implementation of neighborhood watch programs, Citizen Academy, Explorer program, Field Training pro

gram, and prescription drug drop box & take-back programs. Chan's relentless can do attitude and hard work ethic is what makes him stand out amongst his peers. He was awarded Officer of the Year for the Special Services Unit for the Statesville Police Department in 2012. Congratulations Brother Austin!

Nominations for the 2013 Mark Tucker Memorial Award are open so please begin working on those nominations. As always please contact me should you need advice on any nomination process or know of one of our Brothers or Sisters who deserves recognition outside our two standing awards.

I would like to thank Awards Committee members Jimmy Wingo of Harold C. Enloe Lodge #1, Rick Eades of Iredell County Lodge #10, Greta Philbeck of Cleveland County Lodge #18, Jesse Jernigan of Wayne County Lodge #62, Byron Highland of Pitt-Greenville Lodge #69, Robert "Reo" Griffith of Avery County Lodge #91, and Phil Wiggins, Committee Advisor, Durham County Lodge #2.



Legal Aid Testimonial

By Grover M. King
Lodge 59 Member

It is with much humbleness and thankfulness that I send this message. I joined the Fraternal Order of Police not thinking that I would someday need their services. Unfortunately, on October 11, 2012, I was involved in a traffic accident where the driver of the other car died. I contacted Sergeant Lester Lowe and he advised me to contact Rich Hattendorf, the State Counsel for the FOP. After making contact he began assisting me on what to do, who to contact, and what was to be expected. Within a matter of a few short hours, I was contacted by Haral Carlin, an attorney that works with the FOP representing the members. He informed me that he was taking my case and assisted me with all of the paperwork and walked me through everything he planned to do.

I have nothing but praise and respect for the FOP and what they stand for and very glad to say I am a member. I am also very glad that Lodge 59 President Lester Lowe was there to help and guide me through the whole ordeal. Some law enforcement officers do not join because they think there is a cap on the FOP legal aid and that the FOP will only go so far with support and that includes the financial aspect also. After speaking with President Lowe I found out that is a false statement. They are with you until everything is taken care of. Again, I can never thank the FOP enough for what they have done during my ordeal.

OFFICER WIND AND THE FOP PREVAIL BEFORE THE N.C. COURT OF APPEALS IN PERSONNEL RECORDS CASE

By Legal Aid Committee

FOP Member David Wind of the Gastonia Police Department is locked in an enormously important legal battle with his employer over the issue of whether North Carolina law enforcement officers shall continue to enjoy their rights to access and obtain all of the authorized portions of their own personnel files.

In 2008, Officer Wind had been subjected to two complaints. Both complaints were thoroughly investigated. One

complaint was determined to be unfounded and closed. The other complaint was determined to be not sustained and was also closed. The allegation in one of the complaints was serious and Officer Wind was understandably curious in understanding the alleged basis of the charge and the identity of the complainant.

Officer Wind followed protocol and requested access to his files. Officer Wind requested access to the substantial por-

tions of his personnel file, which is specifically authorized as being available for disclosure to officers by state statute, NC.G.S. 160A-168.

After attempting to amicably resolve the dispute with no interest by Gastonia in resolving the matter, Officer Wind sought FOP legal assistance. A civil action was filed challenging the City's actions on statutory and constitutional grounds.

Continued on P. 8

Continued from P. 7

After a hearing before Superior Court Judge Forrest Bridges, the Court ruled in Officer Wind's favor on a motion for summary judgment prior to trial. The Judge ruled that Gastonia had violated Officer Wind's rights to obtain the authorized portions of his personnel file.

Gastonia initiated an appeal from the Superior Court order in Officer Wind's favor. The case was recently heard by the North Carolina Court of Appeals, where the Court of Appeals strongly ruled in Officer Wind's favor. However, the decision was a split 2/1 decision with a dissenting opinion by Judge Chris Dillon. The decision can be found on www.nccourts.org.

Gastonia's argument and that of the dissent is an extremely narrow and technical position that has never before been recognized in North Carolina law. Gastonia claims that the decisions by the Chief of Police in not imposing disciplinary action against Officer Wind were not even personnel decisions. Interestingly, Gastonia's official position before the Court was directly contradicted by the sworn deposition testimony of the Gastonia Chief of Police who made clear that he made official personnel decisions on both of the matters and determined that Officer Wind did not engage in any misconduct whatsoever and that no disciplinary action was warranted.

It became clear that Gastonia has pursued this matter in an effort to attempt to develop new precedent so that Gastonia and other law enforcement employers will be able to hide crucial personnel documents from law enforcement officers. The FOP is astounded at this position for many reasons. As officers and virtually everyone else knows, there are numerous reasons why law

enforcement officers need to access their personnel file and obtain documents therefrom on a regular basis. Officers are expected to stay on top of developments in their own careers, including personnel developments where there are documents being placed within their personnel files.

The personnel files of officers are often obtained in civil litigation where complainants and adverse parties have their files. The FOP believes that it is outrageous for a law enforcement officer to be denied access to his own files which reflect matters about the officer.

The majority decision of the Court of Appeals was extremely strong in Officer Wind's favor. The majority decision has established a major precedent in favor of North Carolina law enforcement officers.

The City of Gastonia, however, has taken the fight even higher. Because there was a dissenting opinion, that afforded Gastonia a right to have its position heard by the North Carolina Supreme Court. That appeal has been filed. The case will be briefed out and heard before the Justices over the next several months.

The FOP is honored to be in this fight on behalf of Officer David Wind. The issues presented in this case are enormously important for all North Carolina law enforcement officers.

The FOP has supported the case additionally with an amicus curiae brief to assure the Appellate Courts fully understand the importance of these crucial issues for the FOP and the North Carolina law enforcement community.