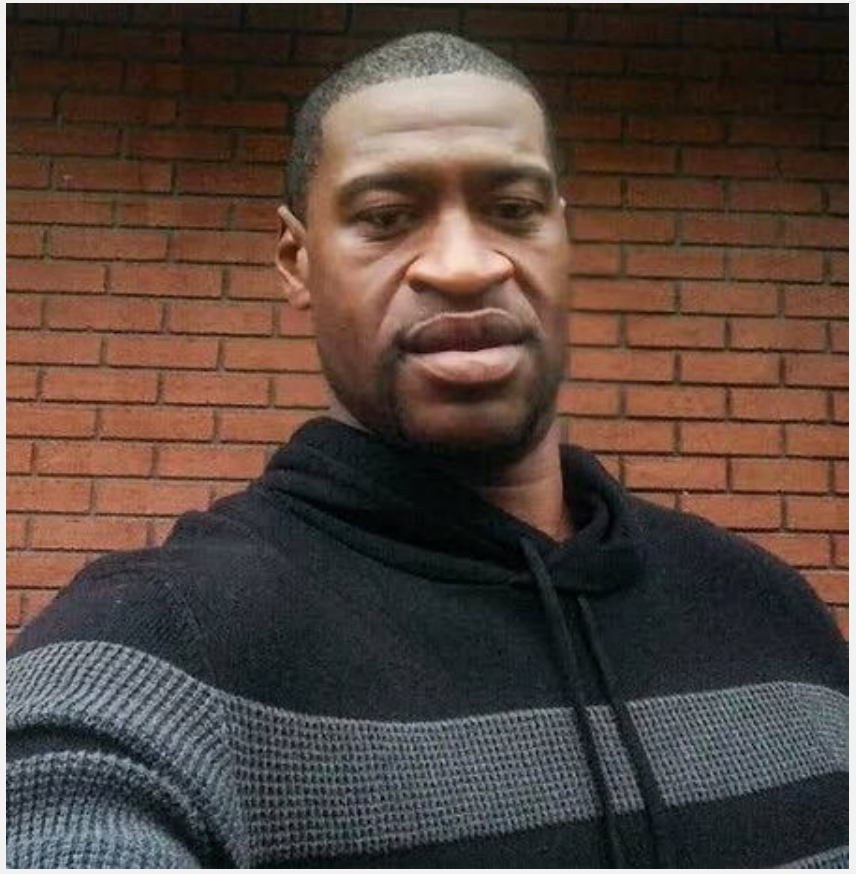
POLICING IN THE POST-FLOYD ERA

Topics, Trends, & Strategies

2020: A YEAR LIKE NO OTHER

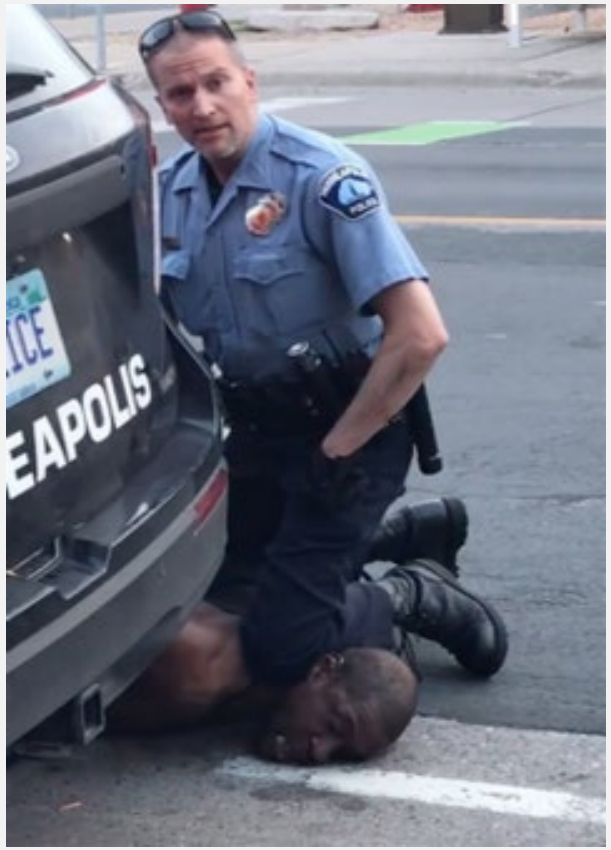
- Global COVID-19 Pandemic
- Nationwide Lockdowns
- Unknown Variables
- Remote Work & Zoom Meetings
- Businesses Closed
- Supply Chain Issues

MAY 25, 2020
DEATH OF GEORGE FLOYD



“I CAN’T BREATHE”

Image of Officer on His Neck



INCITED A NATION ALREADY ON EDGE




ABOLISH
THE
POLICE


#BLM
BLACK
LIVES
MATTER
DEFUND
POLICE
BLACK LIVES MATTER
NO JUSTICE NO PEACE
DEFUND THE POLICE
BLM


POLICE
POLICE
POLICE
POLICE
POLICE
POLICE
POLICE


PARK TOWERS APTS.
Now Open
STATE TROOPER
STATE TROOPER
STATE TROOPER
POLICE


BLACK & WHITE




WATSON-FORSBERG
WATSON-FORSBERG
BIGFLOYD


LET US
BREATHE
CONVICT
KILLER COPS

SOCIAL REVERBERATION

- **Reverberation:**
- **The Phenomenon of Persistence of Sound After it Has Been Stopped as a Result of Multiple Reflections From Surfaces**

WHAT HAS BEEN THE IMPACT MOVING FORWARD?

NUCLEAR VERDICTS



WHAT IS A NUCLEAR VERDICT?

- A Verdict in Excess of
- $10,000,000
- Trucking Industry Origins



IMPACT ON POLICE LITIGATION

- $ 17,000,000 jury verdict in *French v. City of Los Angeles* (Oct. 2021)
- Off-Duty LAPD Officer Shot a Mentally-Disabled Man in Costco

FRENCH V. CITY OF LOS ANGELES DAMAGES

- $1 Million for Each Parent = $2 Million
- $1 Million for Decedent's Pain and Suffering
- $3 Million for Loss of Life
- $5.171 Million for the Mom's Injuries
- $5.831 Million for the Dad's Injuries

FEDERAL JURY AWARDS $85 MILLION TO CALIFORNIA FAMILY IN WRONGFUL DEATH LAWSUIT AFTER ARREST

BY JOSH CAMPBELL AND ELIZABETH JOSEPH, CNN
SAT MARCH 19, 2022

A Federal Jury Awarded $85 Million to the Family of a California Man Who Died in 2015 After a Confrontation with San Diego County Sheriff's Deputies, Court Records Show.

The Jury's Verdict Came in a Negligence and Wrongful Death Lawsuit Filed by the Family of Lucky Phounsy Against the County and Sheriffs.

$85 MILLION VERDICT CONT'D

The Federal Jury Found the Deputies Used Excessive Force Against Phounsy, Weren't Properly Trained, Violated Phounsy's Civil Rights, and Were Negligent in Their Duties -- All of Which Led to his Wrongful Death, According to Court Records.

Phounsy's Family was Awarded $5 million for the Pain and Suffering he experienced -- $2 million for Suffering Endured Before he was Placed into an Ambulance, and $3 million for Suffering Endured Before his Death -- as well as $80 Million for Their Loss of his Love, Companionship and More, Court Records Show.

COLORADO JURY AWARDS $14M TO PROTESTERS OVER POLICE ACTIONS DURING 2020 DENVER DEMONSTRATIONS

BY LOUIS CASIANO | FOX NEWS | MARCH 25, 2022

- A Colorado Jury Awarded a $14 Million Judgment to 12 Protesters After Finding Denver Police Officers Violated Their Constitutional Rights Amid Chaotic Demonstrations in 2020 Over Police Brutality and Racial Injustice.
- Jurors Found Denver Violated the First and Fourth Amendment Rights of Protesters, Who Claimed Police Officers Injured Them During the Gatherings That Were Sparked by the Death of George Floyd, the Denver Post reported. They Heard Testimony About the Alleged Failure of Police to Coordinate During the Law Enforcement Response During the Three-Week Civil Trial.

GEORGE FLOYD FAMILY REACHES $27 MILLION SETTLEMENT WITH MINNEAPOLIS

CIVIL SETTLEMENT COMES AS FORMER POLICE OFFICER DEREK CHAUVIN STANDS TRIAL FOR MURDER IN THE CASE

BY JOE BARRETT AND DEENA WINTER
UPDATED MARCH 12, 2021 7:02 PM ET

- MINNEAPOLIS—The Minneapolis City Council Unanimously Approved a $27 Million Settlement With the Family of George Floyd, Whose Death in Police Custody… Sparked a Summer of Unrest and a Racial Reckoning Over Law Enforcement's Treatment of Black Suspects.

BREONNA TAYLOR SETTLEMENT IS AMONG LARGEST PAYOUTS LINKED TO A POLICE SHOOTING

BY NICOLE CHAVEZ AND CHRISTINA CARREGA, CNN
UPDATED 6:33 PM ET, WED SEP. 16, 2020

- The **$12 million Settlement** with Breonna Taylor's Family is a Historic Move for Louisville, Kentucky, but Across America it's the Latest Financial Repercussion in a Police Misconduct Case.
- More Than Six Months After Taylor Was Killed Inside Her Apartment as Police Officers Executed a "No-Knock" Search Warrant, the City is Poised to Pay its Highest-Ever Settlement, a City Spokeswoman Told CNN.

WHAT CAUSES NUCLEAR VERDICTS?

JURORS

- Anti-Police Sentiment & Bias
- Stealth Jurors
- Income Inequality; Pandemic Payouts
- Social Justice
- Large Verdicts & Media Publicity
- Reptile Theory Arguments

WHAT IS REPTILE THEORY?

- Trial Strategy Developed by David Ball & Don Keenan; "Reptile – The 2009 Manual of the Plaintiff's Revolution"
- Focus is on the Defendant's Conduct and How it Endangers the Juror & Juror's Family
- Replaces the Standard of Care with General Ideas of Safety and Security
- Litigation Strategy is to Motivate the Jury to Protect the Community by Focus on Future Safety – Rather Than Specific Individual Wrong
- Focus on Anger & Defendant's Failure to Comply with General Safety Principles


#. I+ Could
Have Been
my Son!!!

IS IT WORKING?
YES!!!

- Safety Rule + Danger = Reptile
- Goal is to Awaken Juror's "Reptile Brain" so That They Equate Justice with Safety and Security



HOW TO MITIGATE

- Jury Consultants
- Juror Questionnaires
- Juror Profiles
- Opinion Polls
- Mock Trials
- Recognize Strategy & Plan Accordingly
  - Ex. Plaintiff's Depo Questions Designed to Obtain Soundbites

OTHER OBSTACLES

POLICY CHANGES
DISTRICT ATTORNEYS & COURTS

- Los Angeles District Attorney George Gascon Took Office in Nov. 2020
- The Next Month He Issued Several Special Directives
  - Prosecutors Forbidden From Attending Parole Hearings With Victims or Their Families
  - Elimination of Cash Bail
  - Elimination of Sentencing Enhancements, Including GBI, Gangs, Narcotics Trafficking, Guns, Offender on Probation/Parole
  - Repeat Violent Criminal Treated as First Offenders, Including Murder, Rape, Robbery, Kidnapping, Sex Offenses
  - Several Misdemeanors No Longer Prosecuted: Criminal Threats, Resisting Arrest, Trespassing, Loitering to Commit Prostitution, Under the Influence of Controlled Substance, Public Intoxication

EL MONTE OFFICERS SHOT & KILLED

- Cpl. Michael Paredes & Officer Joseph Santana Shot and Killed in the Line of Duty on June 14, 2022
- The Shooter, Justin Flores, Was on Probation for a Gun Violation Despite Being a Repeat Offender
- Both Officers Were Married Fathers of Children

MORE DETAILS EMERGE IN FATAL SHOOTING OF 2 EL MONTE POLICE OFFICERS

BY **RUBY GONZALES** SAN GABRIEL VALLEY TRIBUNE
PUBLISHED: JUNE 20, 2022 AT 7:10 P.M. | UPDATED: JUNE 21, 2022 AT 2:03 P.M.

- On March 19, 2020, a Prosecutor Charged Him with Being a Felon in Possession of a Weapon, Being a Felon in Possession of Ammunition and Drug Possession.
- Flores Took a Deal, Pleaded no Contest to Being a Felon in Possession of a Weapon and Was Sentenced on Feb. 10, 2021 to Two Years Probation, 20 Days in County Jail and 30 Days Community Labor. The Two Other Charges Were Dismissed.
- Pursuant to the California Strike Law, a Minimum Sentence for Flores Would Have Been 32 Months,

GASCÓN BACKS HANDLING OF EL MONTE SHOOTING SUSPECT CASE, SAYING HE HAD 'NO HISTORY OF VIOLENCE'

BY JOSH HASKELL TUESDAY, JUNE 21, 2022

- Gascón Insisted a Plea Agreement That Allowed the Suspect to **Avoid Jail Time Was "Appropriate Under the Circumstances."**
- Gascón Asked the Public to be Patient With the County's "Imperfect System" and Noted a Lack of Resources for Those With a Criminal Record, Such as Transitional and Trauma Recovery Services Along with Employment and Housing Assistance.
- Gascón: "I Know That This is Frustrating to Hear, and it May Not Help Heal the Wounds for Some, But We Do Not Serve Our Community When We Try to Pretend That we Can Predict 100% of the Time When These Cases are Going to Occur."
- "...The Reality is That When You Have the History That This Individual Had, the Outcome was Appropriate Under the Circumstances."

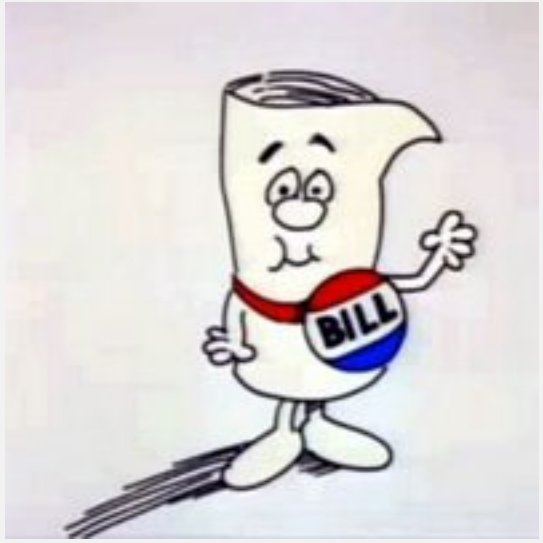
POLICE EXODUS CAUSES NATIONWIDE OFFICER SHORTAGE

DEVAN MARKHAM NEWSNATION

POSTED: JUN 13, 2022 / 08:53 AM CDT **UPDATED:** JUN 13, 2022 / 07:51 PM CDT

- In New York City Alone, New Data is Revealing That 1,596 Officers Have Either Resigned or Retired so Far This Year, According to Reports Obtained by the New York Post. That's up Nearly 40% From This Time Last Year, the Largest Mass Departure on NYPD Record.
- A 2021 Survey From the Police Executive Research Forum Showed a 45% Increase in Retirements, and Nearly 20% Spike in Resignations, Over the Previous Year.
- Officers Cite Lack of Support, Concerns About Lawsuits & Indemnification, Eroding Legal Protections, Safety

CHANGES IN LAW
POST-2020



AB 1506

- Require the DOJ to Review Use of Force Policies & Allow a "State Prosecutor" to Conduct Investigations Into Officer-Involved Shootings
- Gov't Code § 12525.3
  - (2) The state prosecutor is authorized to do all of the following:
  - (A) Investigate and gather facts in an incident involving a shooting by a peace officer that results in the death of an unarmed civilian.
  - (B) For all investigations conducted, prepare and submit a written report. The written report shall include, at a minimum, the following information:
  - (i) A statement of the facts.
  - (ii) A detailed analysis and conclusion for each investigatory issue.
  - (iii) Recommendations to modify the policies and practices of the law enforcement agency, as applicable.
  - (C) If criminal charges against the involved officer are found to be warranted, initiate and **prosecute a criminal action against the officer**.
  - (3) The state prosecutor **shall post and maintain on a public internet website each written report prepared by the state prosecutor** pursuant to this subdivision
  - Gov. Newsom Signed Into law 9/30/20

AB 1196

- Prohibits Law Enforcement From Using Choke Hold or Carotid Restraint
- Law Enforcement Groups Requested An Amendment That Would Allow For Use of These Restraints in Self-Defense – Which Did Not Make it Into Final Version
- Obvious Reaction to George Floyd Incident
- Status: Gov. Newsom Signed 9/30/20

AB 846

- Require Peace Officer Screening to Include Evaluation for Bias Regarding Race or Ethnicity, Gender, Nationality, Religion, Disability, or Sexual Orientation
- Require POST to Study, Review, and Update Screening Materials To Identify Explicit and Implicit Bias in These Categories
- Require "Every Department or Agency That Employs Peace Officers to Review the Job Descriptions Used in the Recruitment and Hiring of Those Peace Officers and to Make Changes That **Deemphasize the Paramilitary Aspects of the Job and Place More Emphasis on Community Interaction and Collaborative Problem Solving**"
- Status: Gov. Newson Signed 9/30/20

RECENT ADDITIONS

- AB 26: Requires Officers to Immediately Report Incidents of Excessive Force and Intervene if They Witness Use of Force "Clearly Beyond That Which is Necessary"
- AB 89: Raised Age Limit for Officers in CA from 18 to 21, and Required New Officers to Have Bachelor's Degree
- AB 481: Requires Law Enforcement Agencies to Implement a Military Equipment Use Policy, During a Public Meeting, in Order to Continue to Receive and Use Surplus Equipment From the U.S. Military
- AB 496: Prohibits Law Enforcement Agencies From Authorizing Methods of Transport or Techniques That Lead to a "Substantial Risk" of Positional Asphyxia

CACI 1305B. BATTERY BY PEACE OFFICER (DEADLY FORCE)

MAY 2021

- A Peace Officer May Use Deadly Force Only When Necessary in Defense of Human Life.
- [Plaintiff] claims that [defendant] unnecessarily used deadly force on [him/her/name of decedent]. To establish this claim, [plaintiff] must prove all of the following:
- 1. That [defendant] intentionally touched [plaintiff/decedent] [or caused [plaintiff/decedent] to be touched;
- 2. That [defendant] used deadly force on [plaintiff/decedent];
- 3. That [defendant]'s Use of Deadly Force Was Not Necessary to Defend Human Life;
- 4. That [plaintiff/decedent] was [harmed/killed]; and
- 5. That [defendant]'s use of deadly force was a substantial factor in causing [plaintiff/decedent]'s [harm/death].

CACI 1305B CONT'D

- **[Defendant]'s Use of Deadly Force Was Necessary to Defend Human Life Only if a Reasonable Officer in the Same Situation Would Have Believed, Based on the Totality of the Circumstances Known to or Perceived by [defendant] at the Time, That Deadly Force Was Necessary:**
- to Defend Against an Imminent Threat of Death or Serious Bodily Harm to [defendant] [or] [to another person] [or]
- to Apprehend a Fleeing Person for a Felony, When All of the Following Conditions are Present:
- i. The felony threatened or resulted in death or serious bodily injury to another;
- ii. [Defendant] reasonably believed that the person fleeing would cause death or serious bodily injury to another unless immediately apprehended; and
- iii. If practical under the circumstances, [defendant] made reasonable efforts to identify [himself/herself] as a peace officer and to warn that deadly force
- would be used, unless the officer had objectively reasonable grounds to believe the person is aware of those facts.

CRIMINAL PROSECUTIONS

- Ex-Brooklyn Center Police Officer Kim Potter Sentenced to 2 Years for Fatally Shooting Daunte Wright
- Said She Was Reaching for Her Taser But Pulled Out Her Service Weapon Instead
- Prosecutors Recommended 86 Months
- Judge Chu:
- "This is One of the Saddest Cases That I've Had in My 20 Years on the Bench."

MEDIA MINDFULNESS

- Make a Good Movie…. or at Least
- **Don’t Make a Bad Movie!!!**



TEXT MESSAGES

- Personal Communications Can Become Discoverable, Especially in Federal Court, Due to Discovery Standard
- Would I Send This to My Mother? My Boss?
- Would I Want to Explain This in Court?
- Reckless Communications Can Cost $$$$
- Ex. Torrance Police Dept.

ACTIVE SHOOTER SITUATIONS

UVALDE POLICE RESPONSE AN 'ABJECT FAILURE' THAT IGNORED LESSONS FROM SHOOTINGS, TEXAS TOP COP SAYS

NIKI GRISWOLD & CHUCK LINDELL
AUSTIN AMERICAN-STATESMAN
JUNE 21, 2022

- Police Had Enough Officers on the Scene of the Uvalde School Massacre to Have Stopped the Gunman Three Minutes After He Entered the Building, the Director of the Texas Department of Public Safety Testified Tuesday, Calling the Police Response an “Abject Failure" That Ignored Lessons From Previous Shootings and Put the Lives of Officers Ahead of the Lives of Children.
- There Were Enough Officers "to Isolate, Distract and Neutralize the Subject," DPS Director Steve McCraw Told a State Senate Committee.
- McCraw Blamed the Incident Commander, Pete Arredondo, the School District's Police Chief, for Stopping Officers from Quickly Confronting the Gunman.

TULSA POLICE RESPONSE TO MASS SHOOTER APPEARS TO BE DRASTICALLY DIFFERENT FROM UVALDE

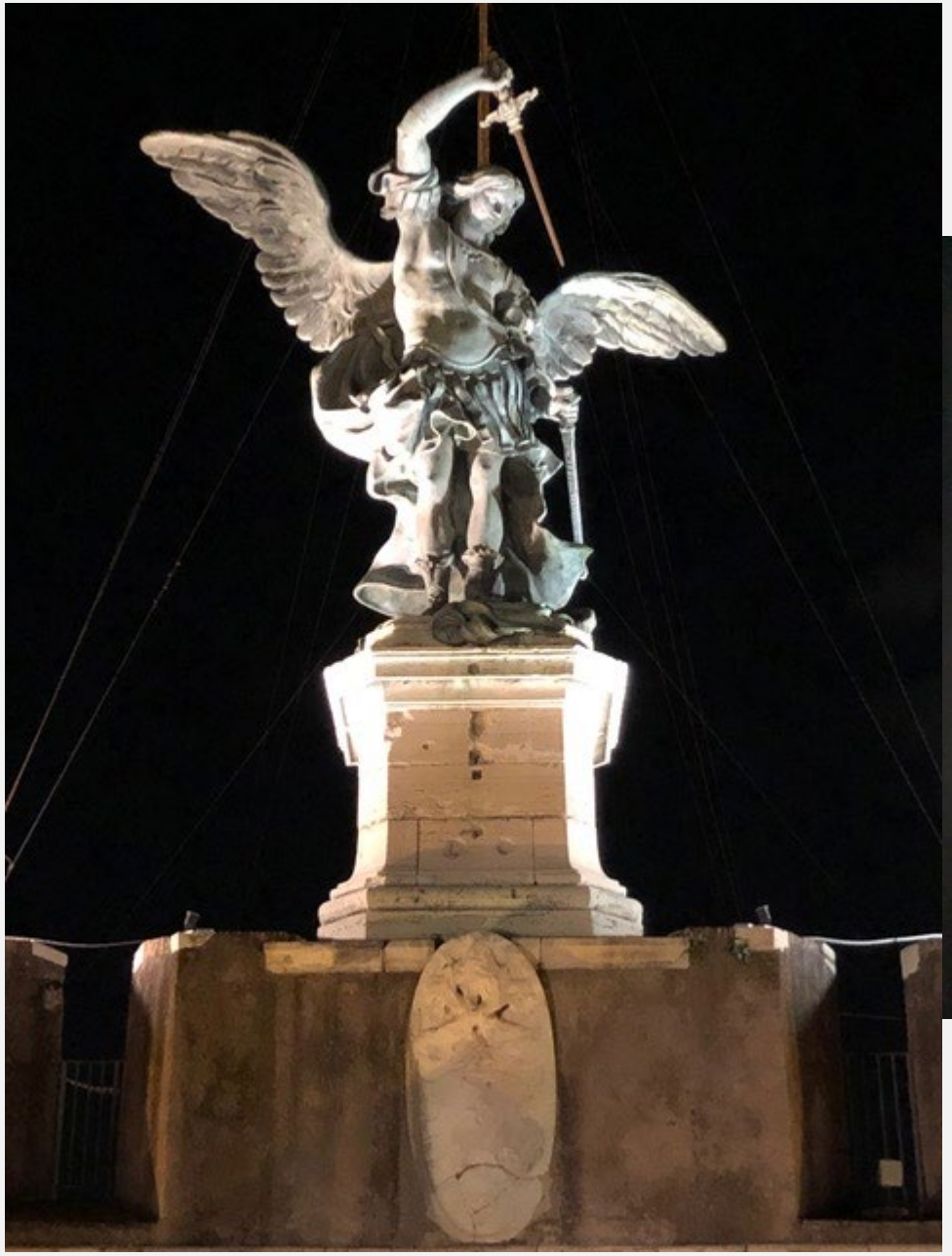
DALE DENWALT - OKLAHOMAN
JUNE 4, 2022

- Police Officers' Response to a Gunman Inside a Tulsa Health Clinic on Wednesday Appears to Starkly Contrast with How Officers Responded to the School Shooting in Uvalde, Texas, a Week Earlier.
- At a News Conference on Thursday, Tulsa Police Chief Wendell Franklin said Police Moved in Quickly When a Gunman Began Firing Inside the Natalie Building on the Saint Francis Health System Campus. They Reached the Shooter's Location Within Six Minutes of the First 911 Call.
- While Franklin did not Mention Uvalde, He Repeatedly Highlighted His Agency's Training and Active Shooter Philosophy that Quickly Led Police to the Second Floor of the Natalie Building.

TPD ACTIVE SHOOTER RESPONSE

- "When We Get That Call, We are Going to Disregard Any Safety Measures That We Might Have for Ourselves and We're Going to Go in the Building to Deal With the Threat," Franklin Told Reporters. "Our Philosophy is We Will Stop the Threat and We Will Do That by Any Means Necessary. That's Exactly What the Mindset of These Officers Were That Responded on the Scene Yesterday, and They Performed Heroically in my Opinion."

CAMPUS POLICING TRENDS



MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

Lynn L. Carpenter
ATTORNEY AT LAW

15TH FLOOR AT 801 TOWER
801 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3012

DIRECT 213·486·2272
TELEPHONE 213·624·6900
FACSIMILE 213·624·6999
llc@manningllp.com

♦LOS ANGELES ♦IRVINE ♦NEW YORK ♦SAN DIEGO ♦SAN FRANCISCO ♦PHOENIX
www.manningllp.com

llc@manningllp.com