Director’s Message
by Gregory Smith, M.A.

Fast happenings at ILEA!
Over the last 18 months, we have initiated a number of new projects and entered into partnerships that have delivered many positive returns.

This work includes collaborating with the Texas Municipal League Intergovernmental Risk Pool, the International Association of Chiefs of Police Ethics Committee and Leadership in Police Organizations Program, The University of Texas at Dallas Justice Administration Graduate Program, University of North Texas Department of Criminal Justice, Tarleton State University Criminology and Criminal Justice Department and others.

These partnerships increased overall course enrollments over 10 percent and doubled the number of First Line Supervisors trained. There has also been a substantial increase in program requests on a national/international level. In the last 18 months, ILEA has delivered approximately 42 programs. This equaled 52 weeks or 260 days of training throughout Texas, the United States and Canada. Along with the growth in our supervisory training programs, we have also seen a major uptick in the request for ethics education. We recently delivered programs in York Region Canada, New Brunswick, New Jersey, Kent County Michigan, Noblesville, Indiana, Rapid City, South Dakota and San Antonio, Texas.

Internally, it has been a busy year for Team ILEA as well. We have had one significant personnel change. Natalia Kolakowska left in order to be closer to her family. While she will be missed, we are happy to welcome Jasmine Hunt to the team, whose professionalism, dedication, and good humor have helped fill the gap left by Natalia. Despite these changes, our small staff could not possibly be able to manage this workload without the assistance of our ILEA Proctor Initiative. These selected and trained professionals carry our banner throughout the country, and ensure that all remote training delivered by our adjunct instructors maintain the standards established by our institution. This year Chief Deputy (Ret.) A. Jay Six, Sergeant Frank Bradford of Richardson PD, Lieutenant Jon Skertich of Frisco PD and Lieutenant Jeff Garner of North Richland Hills PD have been particularly indispensable in the delivery of our services.

As we move forward, we are excited to continue working with our partner agencies to seek ways to enhance leadership training for law enforcement. The number of critical issues facing law enforcement continues to grow. It is both our mission and greatest desire to assist police leaders to find ways to address these myriad problems in a manner that is most beneficial to the communities and citizens you serve.

Educating the Next Generation of Law Enforcement Leaders…We Are TEAM ILEA!

MARK YOUR CALENDAR!
Contemporary Issues and Ethics Conference
December 3-4, 2018
Why do you do what you do?
by Sgt. John Krueger

Overseeing an agency’s recruitment process is an interesting perspective on law enforcement practice to say the least. Arguably one of the most important influences in determining the course of a department’s future, the hiring process can also prompt its fair share of SMH text messages shortly after any interaction. Pausing for translation - if you had to consider the abbreviation in the last sentence, appoint someone else to do your recruiting for you. Nevertheless, I offer the following account as a reminder of the value inherent in our own self-reflection.

After reviewing a series of online applications, followed by a smaller subset of background investigations and physical fitness tests, my lead background investigator and I collectively coordinate oral review/hiring boards, in a manner similar to those conducted by many other agencies. Typically, in an agency such as ours, which hires only pre-certified peace officers, oral boards reveal one of the standard styles of applicant: (a) lateral transfer who claims they were held back at their former agency, and will shine if simply given an opportunity, (b) previously-certified peace officer turned private sector runaway who decided the extra money wasn’t worth the boring daily grind, or (c) recent academy graduate who gives the same carbon-copy textbook answers which have been used since the middle of our last century. Unfortunately, the task then becomes looking for inconsistencies in their personal stories, rather than embracing the worthwhile human being sitting in front of you. Of course, there are exceptions to the rule, and that’s where I’d like to lead you for a moment.

Military veterans deserve our respect, for sure. However, having been in the military, I join many reading this who acknowledge the reality that many of our former service members may not be right for law enforcement. Yet, when diamonds emerge… they shine. Moreover, they remind us of the important things which comprise the long-honored title of public servant. This story is one where an applicant, a military veteran, used their closing opportunity to ask the five board members, “With all of the disrespect law enforcement gets, day in and day out, why do you put that uniform on and come to work every day? I know why I put my uniform on every day when I was in the military, but why do you do what you do?”

Interestingly, after each board member recovered from the shock of such a thoughtful question, the panel of four officers, holding differing ranks and positions, as well as a tenured civilian staff member, offered up a series of vastly differing words, yet each holding a common theme – the opportunity to help others on a daily basis. Remarkably, as each law enforcement veteran’s answer spilled out, the scenario proved both ironic and prophetic.

Many initial law enforcement applicants, when posed the standard board question of why they want to join an organization, they verbally deny their heart’s desired answers of: prestige; respect; tradition; honor; consistent benefits; legally-sponsored power & authority, I have an exceptional background and/or limited job-skills; etc., often in favor of saying that they truly want to “help people.” A canned answer for many, to be sure, but one which isn’t easily arguable.

Sadly, as many reading this article can attest, once the average peace officer hits the streets, helping is primarily a forced event which results from a call for service. Most new to the streets, first doing as they’re told during field training, later go out on their own and combine their desired hunting methods with a mediocre adherence to administrative performance prescriptions, eventually scowling at (or ignoring completely) any opportunity to “help people.” This is not necessarily a bad thing in some respects, as driven workers wearing blinders allow for high-levels of production. However, in the presence of production, each of us know how efforts geared toward efficiency usually deny quality, and systematically disconnect us from the communities who need us to fill another role – public servant.

For the five members of the listed hiring board, we have promoted in rank or transferred into various support roles. Additionally, the people chosen for our review boards are progressive members of the agency. Therefore, helping has become naturally rewarding for us. But, there are many others who remain in our organization, and yours if you’re honest with yourself, who merely collect a paycheck without adding value to your agency or the community you serve.

Ponder for a moment…if those of us on a hiring board all came back to a similar response regarding the opportunity to help others, I ask everyone reading this article - Why do you do what you do?

If you do what you do in order to help others, then I challenge you to examine your daily tasks, and be honest enough with yourself to see if that’s true. Question yourself – Am I really helping others? If so, how? If not, where can you start today?

Conversely, if you’re not sure why you do what you do anymore, I challenge you to examine your heart, and why it is that you entered the law enforcement profession in the first place. Moreover, why do you remain?

John Krueger is an Administrative Sergeant with La Porte Police Department. In addition to completing several of ILEA’s Supervisory and Leadership courses, he holds an M.S. in Adult Psychosocial Development from Texas Tech University and a second M.S. in Criminal Justice Management from Sam Houston State University. He also serves as an adjunct professor, teaching courses in both Psychology and Lifespan Development.
By Alex Rogers, M.A. and Thomas E. Meloni, Ph.D.

Abstract

This research explores the recent rise of consent decrees between the United States Department of Justice and local law enforcement agencies. The review examines all 17 consent decrees that are currently active as of Fall, 2016.

Introduction

The paradigm that there is “one best way” to design and produce anything has recently re-surged in the profession of American law enforcement based on the idea of “The Principles of Scientific Management” first posited by Frederick Winslow Taylor in 1911. Taylor’s (1911) objective was to find the most efficient means to increase the production of material goods while lowering time commitments and labor efforts in manufacturing processes. Taylor’s work proved significantly positive in the efficient production of goods, as factories developed rapidly in England and the United States during the Industrial Revolution of the eighteenth century. The efficient production of cloth, steel, railroad equipment, and eventually automobiles increased on a massive scale never before seen by mankind. Taylor was correct in that there are preferred methods to cut time and labor costs while enhancing output in the production of material goods.

The delivery of police services is significantly different when compared with the production of goods. The mission of local policing is at its core “To Protect and To Serve” (Peel, as cited in Robinson, 1987). Police exist for the purpose of protecting the people from the ravaging impacts of crime and serving the people by working to ensure public order. Sir Robert Peel (1829) developed his “Nine Principles of Policing” in 1829, as large numbers of people had moved to the city of London to take jobs in the new factories built during the Industrial Revolution. Peel’s Principles (1829) lay the foundational groundwork for what is known today as community policing. Peel emphasized the need for the police and the public to work together as members of a community. Peel posited that the true test of police efficiency (effectiveness) was the absence of crime and the presence of order, not police reaction to either crime or disorder. Policing is a service industry. Policing is about people not the production of goods.

The recent rise in consent decrees between the United States Department of Justice and multiple local police agencies across America, in directing police mission, strategy, tactics, training and operational policies, raises concern. The effort to design and oversee police operations from the federal level runs in direct contrast to the well founded principle that government services are best designed and delivered at the local level (Osborne & Gaebler, 1993). Federal oversight of the profession of local policing serves as the resurgence of the idea that there is “one best way” (Taylor, 1911) to deliver police services. However, the police are not producing goods, the police are delivering service to the people. Communities differ significantly in the diversity of people and the protection and services citizens expect from their local police.

Observations

A consent decree is an agreement between two parties that sets out guidelines to resolve an issue between the two. Looking at the United States of America, there are currently 17 complete and active consent decrees that bind the federal government, the first party, to local law enforcement, the second party. Within the 17 consent decrees that are currently active within law enforcement agencies, the main objective is, “The United States and the “Insert City” enter into a Settlement Agreement and Memorandum of Understanding (“MOU”) with the goal of ensuring that police services are delivered to the people of “Insert City” in a manner that fully complies with the Constitution and laws of the United States, effectively ensures public and officer safety, and promotes public confidence in the “Insert Police Department” and its officers.

With the main objective being the same for all the agreements, the reasons why the agreements were sought vary. Many of the agreements started because of Department of Justice investigative findings that excessive force was used by police officers in 5 police departments out of the 17 agreements. The next frequent reasoning was tied between police misconduct and police reform with 4 agreements each. The remaining agreements are lower in number and become a little more specific, such as discriminatory policing mentioned in 2 agreements, gender bias/sexual assault in 1 agreement, and engagements with the mental health community in 1 agreement. The issues being addressed may or may not be prevalent in other law enforcement agencies. However within the 17 agreements, the investigations found a large increase in the addressed issues and additional issues were also addressed within the agreement between the Department of Justice and the agency (Department of Justice, 2016).

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Another key observation of the agreements is that the population of the cities varies significantly. In Table 1, the populations range from thousands to millions. The variance in population indicates that the agreements are not based upon population, but on the actual issues identified by the Department of Justice investigations. Population numbers were all gathered in the year of 2010 by the United States Census Bureau.

Table 1: Consent Decrees by Population of City (High to low)

<table>
<thead>
<tr>
<th>Population (High to low)</th>
<th>City, State</th>
<th>Year Went Into Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.884 million</td>
<td>Los Angeles, CA</td>
<td>2015</td>
</tr>
<tr>
<td>3.548 million</td>
<td>Puerto Rico</td>
<td>2013</td>
</tr>
<tr>
<td>1.5 million</td>
<td>Suffolk, NY</td>
<td>2014</td>
</tr>
<tr>
<td>688,701</td>
<td>Detroit, MI</td>
<td>2003</td>
</tr>
<tr>
<td>652,405</td>
<td>Seattle, WA</td>
<td>2012</td>
</tr>
<tr>
<td>609,456</td>
<td>Portland, OR</td>
<td>2014</td>
</tr>
<tr>
<td>556,495</td>
<td>Albuquerque, NM</td>
<td>2014</td>
</tr>
<tr>
<td>417,650</td>
<td>Miami, FL</td>
<td>2016</td>
</tr>
<tr>
<td>390,113</td>
<td>Cleveland, OH</td>
<td>2015</td>
</tr>
<tr>
<td>378,715</td>
<td>New Orleans, LA</td>
<td>2013</td>
</tr>
<tr>
<td>278,427</td>
<td>Newark, NJ</td>
<td>2016</td>
</tr>
<tr>
<td>154,378</td>
<td>Alamance, NC</td>
<td>2016</td>
</tr>
<tr>
<td>134,714</td>
<td>Virgin Islands</td>
<td>2009</td>
</tr>
<tr>
<td>69,122</td>
<td>Missoula, MO</td>
<td>2013</td>
</tr>
<tr>
<td>40,768</td>
<td>Warren, OH</td>
<td>2013</td>
</tr>
<tr>
<td>29,257</td>
<td>East Haven, CT</td>
<td>2012</td>
</tr>
<tr>
<td>21,111</td>
<td>Ferguson, MI</td>
<td>2013</td>
</tr>
</tbody>
</table>

(Census Bureau, 2010)

Figure 3 shows a timeline reflecting the year that the individual agreements became effective. The effective dates when compared to Figure 2, indicate how long the processes took from initiation of investigation by the United States Department of Justice and the final assigning an agreement with the specific agency. Some of the agreement processes lasted one year, as in Detroit Michigan, other processes took as long as 7 years, such as in Warren, Ohio.
Findings

A very important factor to these agreements is the definitions that are used to explain actions each department must take as designed by the United States Department of Justice. There were more similarities to the agreements than differences. For example, the definition of discriminatory policing was common to all agreements. Discriminatory policing was defined as "selective enforcement or non-enforcement of the law, including the selecting or rejecting of particular policing tactics or strategies based on the membership in a demographic category specified in this agreement. Discriminatory policing does not include using race, ethnicity, or any other status in any reliable and recent suspect-specific description (Department of Justice, 2016)."

The definitions are intended to create continuity throughout the agreements and alleviate any type of misunderstanding with discriminatory policing and other common terms.

The continuity of definitions does not stop at discriminatory policing, but extends to important policing actions such as apprehension, arrest, neck holds, passive and active resistance, probable cause, community oriented policing, critical firearm discharge, and reasonable force (see appendix 1). The consistency of police operational definitions indicates that police operations in various departments are being required to follow the same prescribed strategies and tactics.

A serious concern arises with the federal government designing and defining police operational problems in an oversight capacity. Such design may serve to diminish the important wide discretion afforded to police officers to consider all factors involved in citizen interactions, assess the situation, and take appropriate action. A wide reaching federal design assumes that police-citizen encounters are more similar than they are different. Such an assumption disregards the operational reality that each citizen encounter involves an endless variety of factors. For example, officers are required to consider the "totality of circumstances" as does our justice system in the courts. Each and all factors create an endless variety of encounters.

There were also several differences observed between the agreements. For example, in the agreement with Ferguson, Missouri, there are two unique terms found in no other agreements. The first term being "necessary force," defined as the minimum amount of force required, because no reasonably effective alternative appears to exist, to effect a legitimate public safety objective (Department of Justice, 2016). Legitimate public safety objectives include protecting any person from injury, effecting a lawful detention or arrest, and conducting a lawful search. The second unique term being "proportional force," defined as force that reflects the totality of the circumstances surrounding the situation, including the presence or absence of imminent danger to officers or others. Proportional force does not require officers to use the same type or amount of force that the subject uses. The more immediate threat and the more likely that threat will result in death or serious injury, the greater level of force that may be objectively reasonable and necessary to counter it (Department of Justice, 2016).

Concern is raised in that the necessary force and proportional force terms are not reflected in the other agreements. If there are discrepancies within the "one best way," then accomplishing the correct course of action may be much more difficult for the local law enforcement officer. Overall, the conditions that were laid out for the individual departments followed a basic foundation. This foundation consisted of defining all multiple terms, explaining why the agreement was suggested, a breakdown of all policies that need to be updated, specific implementation plans, and a termination clause. Each agreement does not allow for any interpretation or any action by any other parties outside of the United States Department of Justice and the police department being addressed.

Each department is given specific areas within policies that need to be revised according to the United States Department of Justice. These revisions can vary from changing the wording to completely rewriting the policy. All of these agreements specify many of the same areas when regarding policy changes, such as training, crisis intervention, and supervision. The individual agreements go to great length in delineating exactly what needs to be changed in order to meet the specifications created by the United States Department of Justice. The policy and procedural changes in the agreements are first proposed as suggestions by the United States Department of Justice until the written agreement is signed by both parties. Once signed by both parties the agreement becomes a binding contract including failsafes to assure that the specified changes are completed.

The failsafes take the form of a monitoring system. Each agreement includes a clause stating that the parties, the United States Department of Justice and the police department, will jointly select an independent monitor. The monitor is phrased as a team in some agreements and as one sole person in other agreements. The monitor is described as one who is highly qualified in policing, civil rights, monitoring, and other related areas, in order to assess and report on whether the requirements of the agreement has been implemented. The monitor will also determine whether the implementation of the agreement results in constitutional and otherwise lawful policing and administration of justice, as well as increased community trust between the police and its community. The measures for such determinations are not specified.

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Each agreement has different timelines for choosing a monitor, as well as a different timeline in which all the terms of the agreement must be completed. There are no specific consequences in the agreements that outline what will happen if the terms of the agreement are not completed within the specified timeline.

There is a termination clause that comes with each agreement. The termination clause allows the department to sever ties with the United States Department of Justice. Termination can only be applied once all terms of the agreement have been met within the specified timeline in each agreement. If the police department chooses to terminate the agreement, the United States Department of Justice has permission, after a reasonable amount of time, to audit the specific department to see if the new policies and procedures are being upheld to a level of quality as determined by the United States Department of Justice.

Conclusion

In reality, police-citizen encounters are endless in variety, arise unpredictably, and require discretion on the part of the individual police officer in his or her delivery of protection and service to the individual citizen. Applying Taylor's (1911) ideal that there is "one best way" to proscribe police operations, and solve, rectify, or enhance police-community relations disregards the basic premise and important reality of Peel's (1829) nine principles of policing. Peel's seventh principle describes the very nature of the police-community relationship. The "police are the public and the public are the police" describes the close relationship necessary between the local people and the police. Peel (1829) specified that he police are members of the community selected to deliver law enforcement protection and service to all citizens. It is incumbent on the citizens to assist the police in order that the community can reach a quality of life wherein, there is an "absence of crime and the presence of order." Peel prescribed that public approbation of police action was necessary at the local level, in order that the police and the people work together. Peel's entire emphasis was on the absolute necessity that policing is a local government public service (Peel, 1829 as cited in Bloy, 2014).

Although serious systemic or individual employee problems may exist within some police agencies, the recent rise in the number of consent decrees between the United States Department of Justice and local police departments raises a fundamental public policy concern. Public policy is actually designed and delivered at the street level (Lipsky, 1980). The necessity for policing to remain a local government service to be designed and delivered by and for local citizens, requires that local government officials work with community members. The shared effort between local government officials and community members ensures that at the point of service delivery, when the individual police officer meets the citizen on the street, police services are delivered with fairness, respect and absolute adherence to State Law and the United States Constitution. The service need is local. The responsibility is also local.

Future research needs

There remains a clear opportunity for future research. Additional research is needed in assessing the actual effectiveness of the current consent agreements on an individual or collective basis. Other research may investigate the timeline aspect of the consent decrees to assess if adequate time was allocated to fulfill the requirements established within the agreements. Additionally, random surveys of individual community residents should be designed and undertaken to assess citizen satisfaction levels in the communities being served.

References


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Appendix I

Common Definitions

Active resistance, means a subject attempt to attack or does attack an officer. Verbal statements do not constitute active resistance

Apprehension, means the arrest, capture, or taking into custody of a person.

Arrest is the taking on person into custody by another.

AVL, “Automatic Vehicle Locator,” a device that automatically tracks the geographic position of a vehicle and transmits that information to a receiver.

“Canine apprehension” means any time a canine is deployed and plays a clear role in the capture of a person. The mere presence of a canine at the scene of an arrest or use of a canine solely to track a subject will not count as a canine apprehension.

Complainant, means any person, including “insert agency officer or employee,” who makes a complaint against that department, a specific officer, or employee.

Community orientated policing, is a policing philosophy that promotes and relies on collaborative partnerships between a law enforcement agency and the individuals and organization it serves to develop solutions to problems, increase trust in police, and improve the effectiveness of policing efforts.

Critical firearm discharge, means a discharge of a firearm by an officer, including discharges where no person or animal is struck. Range and training firings, destruction of animals, and off-duty hunting discharges where no person is struck are not critical firearms discharges.

Discriminatory Policing, means selective enforcement or non-enforcement of the law, including the selecting or rejecting of particular policing tactics or strategies based on the membership in a demographic category specified in this agreement. Discriminatory policing does not include using race, ethnicity, or any other status in any reliable and recent suspect-specific description.

DOJ, means United States Department of Justice.

“ECW” means Electric Control Weapon, a weapon, including those manufactured by TASER International, designed primarily to discharge electrical charges into a subject that will cause involuntary muscle contractions and override the subject’s voluntary motor responses.

Firearm, means a pistol, revolver, shotgun, carbine, or machine gun, as well as any instrument capable of discharging a bullet or shot.

“Implement” or “Implementation,” means the development or putting into place of a policy or procedure, including the appropriate training of all relevant personnel, and the consistent and verified performance of that policy or procedure in actual practice.

Less lethal force, means force employed that is neither likely nor intended to cause death or serious injury.

Lethal force (also referred to as deadly force), means any use of force likely to cause death or serious physical injury.

“Mental Health Crisis” means an incident in which someone with an actual or perceived mental illness is experiencing intense feelings of personal distress, obvious changes in functioning or catastrophic life events.

“Mental illness” is a medical condition that disrupts an individual’s thinking, perception, mood, ability to relate to others such that daily functioning and coping with the ordinary demands of life are diminished.

Neck hold, means one of the following types of holds: (1) arm-bar control hold, a hold that inhibits breathing by compression of the airway in the neck; (2) carotid restraint hold, a hold that inhibits blood flow by compression of the blood vessels in the neck; (3) a lateral vascular neck constraint, or (4) a hold with a knee or other object to the back of a prone subject’s neck. A neck hold shall be considered lethal force.

Passive resistance, means non-compliance with officers commands that is non-violent and is less aggressive than active resistance.

Police officer or officer, means any law enforcement agent employed by or volunteering for the department, including corrections officer, supervisors, and reserve officers.

Policies and procedures, means written regulations or directives, regardless of the name of the regulation or directive, describing the duties, functions, and obligations of the agency/department officers and/or employees, and providing specific direction in how to fulfill those duties, functions, or obligations.

Probable cause, means that there is substantial objective basis for believing that, more likely than not, an offense has been committed and a person to be arrested has committed it.

Reasonable force, means force that is objectively reasonable under the circumstances and the minimum amount of force necessary to effect an arrest or protect the officer or other persons.

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Appendix II

Different Definitions

“Best Practices”, means guidelines or standards that represent the most efficient and current means for achieving constitutional and effective policing accepted by nationally recognized police professionals or organizations in the relevant subject area, as determined by the parties. (Albuquerque, New Mexico)

“Hard hands” means using physical pressure to force a person against an object or the ground, or the use of physical strength or skill that causes pain or leaves a mark. (Detroit, Michigan)

Monitor, means a person or team of people who shall be selected, pursuant to paragraphs 82 and 83, to monitor and report on the VIPD’s implementation of this Agreement. (District of the Virgin Islands)

Misconduct, means any action or in action by officer other department employee that violates the law, department policy, procedure, rules, or regulations, or other standards of conduct required of city employees. (Newark, New Jersey)

Necessary force, means the minimum amount of force required, because no reasonably effective alternative appears to exist, to effect a legitimate public safety objective. Legitimate public safety objectives include protecting any person from injury, effecting a lawful detention or arrest, and conducting a lawful search. (Ferguson, Missouri)

Proportional force, means force that reflects the totality of the circumstances surrounding the situation, including the presence or absence of imminent danger to officers or others. Proportional force does not require officers to use the same type or amount of force that the subject uses. The more immediate threat and the more likely that threat will result in death or serious injury, the greater level of force that may be objectively reasonable and necessary to counter it. (Ferguson, Missouri)

Thomas E. Meloni completed his Ph.D. in Political Science at Northern Illinois University. Dr. Meloni served for 37 years as a sworn law enforcement officer. He serves on the Advisory Board and as a faculty member at ILEA.

Alex Rogers received his M.A. in May 2017 at Western Illinois University.

Friends, family & colleagues mingle after graduation

CALL FOR NOMINATIONS

GARY W. SYKES AWARD
For Professional Achievement in Law Enforcement

ILEA is currently accepting nominations for the Gary W. Sykes Award for Professional Achievement in Law Enforcement and the Ethical Courage Award.

Both of these awards will be given during the Annual Contemporary Issues and Ethics Conference to be held in Plano in 2018.

Please forward all nominations and questions to Gregory Smith, Director, gsmith@cailaw.org.

Criteria: Recipient must be a criminal justice professional for at least 10 years, has been instrumental in bringing about significant organizational change for the good of the profession; is significantly involved in community service and civic activities; and is a role model to law enforcement officers, support personnel, criminal justice professionals, and citizens.

ETHICAL COURAGE AWARD

Given each year since 1998, this award is intended to recognize an individual or an organization for especially meritorious leadership or courage related to law enforcement ethics and integrity.
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