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## CONSTITUTIONAL POLICING

What 45 Years of Teaching  
This Topic Has Taught Me

PRESENTED BY ATTORNEY RANDY MEANS, J.D.  
CAREER FULL-TIME POLICE LEGAL ADVISOR &  
NATIONAL CONSULTANT TO LAW ENFORCEMENT

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## Constitutional Policing

The U.S. Constitution is the basis of the Rule of Law in our Country and of our Oath of Office as police officers.



On the day we take our oath of office the Constitution becomes much more than a legal obligation ...

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## CONSTITUTIONAL POLICING DEFINED

Defined literally and most narrowly, "constitutional policing" is policing that does not explicitly violate the U.S. Constitution. And that is certainly a good start. Viewed more broadly though, and perhaps better, "constitutional policing" involves a constellation of inter-related, overlapping, interactive, overarching, inextricably intertwined and necessarily integrated dynamics. Whether they are considered to be literally part of constitutional policing per se or alternately as collateral and/or aspirational aspects of its facilitation, they follow in the next slide.

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**CONSTITUTIONAL POLICING FACILITATORS**

- Ethics and Ethical Preparation, including Bias-Fighting
- Community Policing – Legitimacy, Procedural Fairness/Justice
- Trust Building, Compassion, Caring (and more)
- Human Relations and Interpersonal Communication Skills
- Emotional and Spiritual Well-Being (of officers)
- Cultural and Sub-Cultural Competence
- Judgment, Decision Making and Critical Thinking
- Emotional Intelligence and Emotion Management
- Physical Fitness, Tactical Proficiency, Non/De-Escalation (Use of Force)
- Policy, Training, Supervision, Oversight, Accountability and Discipline
- Properly Conducted Internal Affairs Work
- Focused and Committed Leadership – Top Down, Bottom Up

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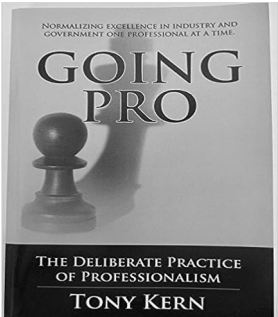
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**“Professionalism”**

“One of the universal truths in the world is that big things are made up of smaller things. ‘Professionalism’ is a big box full of many small parts – and assembly is required.”

“Without a picture of the whole and assembly instructions, it is just a box of parts and will likely remain so forever, set aside for attempted assembly at some vague point in the future which never arrives.”

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**“Level Three Professionalism”**  
 involves embracing and continually improving  
 in all of six professional domains:

**vocational excellence**  
**professional ethics**  
**continuous improvement**  
**professional engagement**  
**professional image**  
**Selflessness**

**This training is about the normalization of excellence  
 through Level 3 Professionalism**

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**Avoiding Problems ...**

*If we can't get the little things right, we'll never get the big things right.*  
 Admiral (ret.) William McRaven  
 “Make Your Bed”

*If you take care of problems while they're small, you don't get a lot of big problems.*  
 General (ret.) Colin Powell  
 “It Worked For Me”



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**CONSTITUTIONAL POLICING  
 FOR TRAINERS AND OTHER LEADERS**  
 Topics for Today

Arriving at a “working definition” of “constitutional policing.”  
 The most likely reason an officer might violate someone’s constitutional rights.  
 Reasons an officer might *knowingly* violate someone’s constitutional rights.  
 Potential consequences of constitutional violations by police.  
 What the Constitution allows but local officials often do not.  
 Potential issues in the training philosophy of “full reach of lawful authority.”  
 How officers may be exposed to misinformation and even “un-information.”  
 Why policy and training must function as conjoined twins.  
 Why truly discerning testing is crucial to effective and defensible training efforts.  
 The role of supervisors and managers in supporting constitutional policing goals.  
 Reasons that non-traditional training methodology may be useful in this arena.  
 Improving training systems and practices.  
 The role of all trainers in helping to assure positive situational outcomes.  
 Spotlighting and highlighting of key areas of constitutional policing.

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Arriving at a  
working definition of  
“constitutional policing”

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The most likely reason  
an officer might violate  
someone’s constitutional  
rights

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Reasons an officer might  
*knowingly* violate  
someone’s constitutional  
rights

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Potential consequences  
of constitutional  
violations by police

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What the Constitution  
allows but local  
officials often do not

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Potential issues in the  
training philosophy of  
“full reach of lawful  
authority”

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How officers may be exposed to misinformation and even “un-information”

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Why policy and training must function as conjoined twins

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Why truly discerning testing is crucial to effective and defensible training efforts

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The role of supervisors  
and managers in  
supporting constitutional  
policing goals

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Reasons that non-  
traditional training  
methodology may be  
useful in this arena

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Training systems and  
practices

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The role of all trainers in helping to assure positive situational outcomes

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Spotlighting and highlighting of key areas of constitutional policing

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**Constitutional Policing Practice Areas**

- The First and Second Amendments
- Fourth Amendment: Search & Seizure
- What is a "Search"? What is a "Seizure?"
- Seizures and Non-seizures of Persons
- Reasonable Suspicion & Probable Cause
- Searches of Persons
- Vehicle Stops and Searches
- Entries into Private Premises
- Waivers & Assertions of Interrogation Rights
- Eyewitness Identification Procedures
- Brady/Giglio Obligations
- Bias and the Equal Protection Clause ...

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## Some Parting Thoughts ...

**Physical, Mental, Emotional & Spiritual Well-Being  
Are Vitally Important to Behavioral Outcomes ...  
As Are Open-Mindedness, Empathy & Compassion  
Ethical Behavior Requires Much Preparation  
High Speed Driving Presents Ethical Issues  
Remember the Duty to Intervene When Necessary**

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**Risk Management Goals**

- 1. Effectiveness
- 2. Public Trust & Confidence
- 3. Avoid Lawsuits (AOC)
- 4. Win Lawsuits (AOC)

- Safety and Survival

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## Related Thoughts

- "Error Control"
- The Critical Role of Ethical Preparation
- What Exactly is Risk Management?
- Structured Common Sense?
- What Causes Police Liability?
- Cultures of Permissiveness
- Lack of Broader Focus

The Overlapping/Overarching Dynamics and Potentials of Community Policing, Constitutional Policing and Preservation of Public Trust and Confidence



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**The times have changed.**

**How we navigate them is critical.**

**The path forward is upward.**

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**Conclusion**

If we as police officers and organizations understand and accept these guiding concepts and embrace them as critical components of our professional culture, not only can we be more effective in carrying out our law enforcement mission, but we will be better able to gain the support and trust of the citizens we serve. That's good for everyone, certainly including us. Benefits ...

- More effective policing
- Increased public and officer safety
- Improved police-community relations (better pay?)
- Fewer complaints and lawsuits, less liability
- Heightened professional image and pride

The guiding concepts are over-arching, inter-related and overlapping, each often applying in multiple areas and providing multiple benefits.

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Law Enforcement Leadership & Risk Management ...

**Stripes to Stars**

Lessons from 40 Years of Training Law Enforcement Officers & their Leaders

Randy Means, J.D., with Tracy Clark-Taylor

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 RANDY MEANS & ASSOCIATES, LLC



Randy Means, JD  
[randy.means@randymeans.com](mailto:randy.means@randymeans.com)  
 702-591-3701 (cell)  
 Randy Means & Associates, LLC  
 302-757-5002 (office)  
[www.randymeans.com](http://www.randymeans.com)

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APPENDIX

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**Community Policing**

- Government of the people, by the people and for the people
- Crime-Fighting and Problem-Solving Partnerships
- Trust Building
- Relationship/Engagement
- Legitimacy
- Procedural Justice (Fairness)
- Really Listening
- Respect
- Positive Personal Contacts

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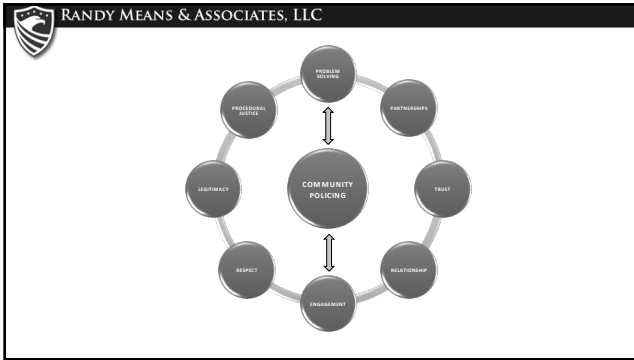
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**Pillars of Community Policing**

|                    |                            |
|--------------------|----------------------------|
| Procedural Justice | Definition?                |
| Legitimacy         |                            |
| Respect            | Co-Producing Public Safety |
| Engagement         | Through Problem-Solving    |
| Relationship       | In Partnership With the    |
| Trust              | Community                  |
| Partnerships       |                            |
| Problem Solving    |                            |

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**TRUE PARTNERSHIP WITH THE COMMUNITY**

Partnerships towards **what**?

Just consultation or **collaboration** in actual Decision-Making and Problem-Solving?

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## Problem-Solving Partnerships (PSPs)

See Community Oriented Policing Services, U.S. Department of Justice  
COPS.usdoj.gov  
For much additional detail

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## Maybe the Way We See the Problem IS the Problem?

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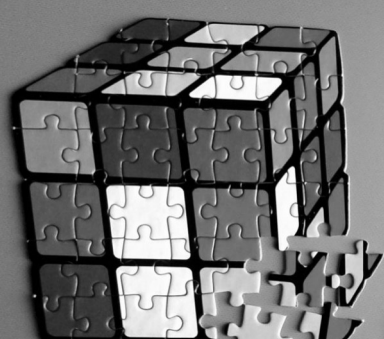
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**DISCUSSION**

The Roles and Responsibilities of Police Officers & The Police Service Itself

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### Public Contact Professionalism

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It's not just *what* you do, but *how* you do it.

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First impressions matter; be mindful of your facial expression, other body language and your voice tones.

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Give people what they *want*.

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*Explanations* are important; people do better with the "what" when you give them the "why."

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One gives *respect* to get respect.

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### Public Contact Professionalism

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The most powerful way a human being shows respect for another is *really listening*.

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*Real* listening is done with intent to understand; disagreement has no place in this; don't argue.

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Seek first to understand, *then* to be understood.

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Listening is a basic tenet of *community policing*.

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Before you get down to business, don't; "small" talk is a *basic civility* and helps with rapport.

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### Effective Communication, De-Escalation & Non-Escalation

- Analogy: A Doctor's Visit
- Self-Awareness and Doing the Work
- Emotion Management
- Human Beings do Three Things ...
- Triune Brain Theory
- Unpacking the Communication Process
- Controlling Bias & Stereotyping
- Open-Mindedness
- Really and Actively Listening
- Tools for Conflict Management
- De-escalation and Non-escalation
- Not making it worse

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