

# Wisconsin Police Chief

Volume 6 Issue 4

July—August, 2004

**By Chief Sue Riseling  
President**

University of Wisconsin Madison Police

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## **In Appreciation**

It has been a distinct honor and a privilege to serve as President of the Wisconsin Chiefs of Police Association this past year. Your faith in selecting me four years ago has resulted in three historic “firsts” for the Association. In electing me you were lead by a University Police Chief, a first. As such you completed another first, which was the only President to be employed by a state agency. And the most obvious, of course is that I am the first woman to serve as President.

You deserve to be congratulated for these “firsts”. Since it seems we all survived those “firsts” I hope it isn’t too long before we see some “Seconds” in those categories. I also hope that it is not much longer until we have another first in the Association and elect a Chief Executive Officer as President who is a “person of color”.

The past year was exciting. We as Chief Executives and taxpayers faced the largest deficit in the state’s history, slashes in state funding that affected all citizens, calls for some of our departments to be eliminated/consolidated and we engaged in a lively debate on the ability of citizens to carry concealed weapons. I think we are just getting warmed up, as all of these issues will be with us for years to come.

As we face those issues and many others we are mindful that today’s post September 11<sup>th</sup> world calls for us to work in different and more coordinated ways. Serving and protecting our communities has grown more complex with the additional threats we attempt to prevent from becoming real incidents. Despite the differences in our department’s size or organizational philosophy, we must remember, we are all in this together.

I want to thank the members of the Association for all of their contributions to the organization during the past year. Many of you pitched in and got involved. The Board of Directors, Committee Chairs and Members, our Executive Director and the Board of Officers worked harder this year than in any other in recent memory.

A special thanks goes to the members of the University of Wisconsin-Madison who made it possible for me to serve you. In particular I wish to thank Assistant Chiefs Dale Burke and Todd Kuschel, my Administrative Assistants Bernie Herbst and Jerome Van Natta and my three Captains, Brian Bridges, Glen Miller and Steve Rogers.

Thank you all and... ON WISCONSIN!!!



## Thanks For The Memories

There are times when other people's words can often say something better than one's own. Between Bob Hope's "Thanks for the memories..." and Carol Burnett's "I'm so glad we had this time together..." I feel they have said it better than I could. Both phrases are equally true for me and this past year serving as your President.

This past year we made progress in a number of areas. We took a long view of some of the issues facing the Association. As a result, the exact outcome may not be known at this time but we know how we are going to get there. I'll just name four areas even though there are many more.

First is our website. For years our committees have struggled with various ideas, companies and trends to establish and run our webpage. This year, the committee headed by Frank Sleeter was able to establish a longer term working relationship with Fox Valley Technical College to begin to have FVTC supply our webpage services. The former company we dealt with, while instrumental in establishing our page was not as adept at maintaining it. Hopefully in the next several months we will see real progress made on our webpage.

Second, is the issue of consolidation of smaller agencies. This issue came to us in the "short term" which was in a piece of legislation. Thanks to hard work by the legislative committee and its Chair Doug Pettit and Vice Chair Joe Coughlin the bill did not pass. Long term I formed an ad hoc committee on Consolidation issues to review the best known information and produce a document that would assist our members who may someday be faced with this issue. The ad hoc Committee and its Chair Tom Bauer have produced a "white paper" that will be available to all members by the Annual Conference in August.

Third, is the issue of the concealed carrying of weapons by others than law enforcement. Short term we stopped very poorly constructed legislation. In the long term we have embarked on an effort to poll our membership on their views, concerns, support, questions and issues they may or may not have on future concealed carry legislation. This will be the first poll on a legislative issue the Association has ever taken. The results of the survey will be factored into our normal legislative process spearheaded by our legislative committee.

Fourth, is the whole area of homeland security. The short term solution was in the form of PPE for our front-line officers. For the longer view the state authored strategic plan that was finished this year. This document outlines a longer term strategy to resolve broad issues like radio interoperability, dealing with mass casualties regardless of the cause, information sharing and development. While titled the "state" strategic plan it has little to do with state government and much more to do with the work our departments and fire service agencies complete everyday and God forbid services we would all need to provide in a major disaster or terrorist act.

As always there is more to do than can ever be done in a year. Yet, I am very satisfied and proud of our progress. Thank you for all your support, feedback, and lively debate. I look forward to supporting incoming President Randy Williams and continuing to serve the Association in the years to come. In keeping with Carol Burnett "Seems we just get started and before you know it, comes the time we have to say so long."

On Wisconsin!!!

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We wish to recognize and thank the following law enforcement agencies that have placed an order for the entry level police officer testing exam. This is a service provided to our members through a partnership with Stanard & Associates and the WCPA.

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- ◆ New Richmond Police Department\*\*
- ◆ North Fond du Lac Police Department \*\*
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- ◆ Oak Creek Police Department
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- ◆ Ozaukee County Sheriff's Department
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- ◆ **Watertown Police Department \*\***
- ◆ **Waukesha Police Department\*\***
- ◆ **Waupun Police Department**
- ◆ **Wausau Department**
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- ◆ **West Bend Police Department**
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## **A MESSAGE FROM PRESIDENT ELECT**

### **CHIEF RANDY A. WILLIAMS ONALASKA POLICE DEPARTMENT**

#### **Time flies when your having fun!**

As I begin my year as President of the Wisconsin Chief's of Police Association, I reflect on my first experience with the Association back in 1994. I cannot believe a decade has past since attending my first Chief's Conference in Eau Claire with my family. Being a new Chief, I didn't know anyone and felt like a fish out of water. But, over the years, I've attended nearly every conference, taken advantage of all the offerings of the association, and I got involved early in serving the Association through committee work. It has been a great ten years and it has been fun.

The coming year will be full of challenges and opportunities. Concealed Carry Legislation will be back, and I have been working with a CCW Survey Ad Hoc Committee to develop a survey for our membership that will provide direction to the Board of Directors on this important issue. More information on the survey will be coming following our Annual Conference in Rothschild. When the opportunity comes, please take the time to complete the survey and provide your input. Other legislative issues that will provide us with challenges in the coming year include TABOR, Consolidation, and the on-going struggles with shared revenues. I look forward in working with our legislative committee on these and other issues.

I have also been working with the Technology and Communications Committee on updating and improving our Website. This has proven to be a major endeavor for the committee, lead by Chief Frank Sleeter of Sun Prairie. After nearly 18 months of hard work, we will soon see the fruits of their labor as the committee plans to roll out a "new and improved" website that our association can be proud. Lots of work still needs to be done and I look forward to the on-going improvements over the course of the next 12 months.

I've gotten to know many of you over the years and now it is an honor for me to serve you as President of the Wisconsin Chief's. I would like to thank Sue Riseling for her guidance and mentorship over the past three years as I followed her ascent to the Presidency. She provided great leadership and direction to the Association over the past year and I look forward to following her example and serving you with all of my best. Please contact me at any time if you have questions or comments.

Respectfully,

Randy Williams

# **ARREST FOR REFUSAL TO IDENTIFY? BEWARE OF MISPLACED RELIANCE ON HIIBEL!**

**By: Kevin P. Reak**  
**GUNTA & REAK, S.C.**  
**Telephone: (414) 291-7979**

On June 21, 2004, the United States Supreme Court held that the arrest of a Terry stop suspect for refusal to identify himself in violation of Nevada Law, did not violate the Fourth or Fifth Amendments to the United States Constitution. <sup>1</sup> The Fourth Amendment prohibits unreasonable searches and seizures. The Fifth Amendment affords protection against self-incrimination. The case was decided 5 to 4 with two separate dissenting opinions.

In Hiibel, the sheriff's department received a telephone call reporting that the caller had witnessed a man assault a woman in a red and silver GMC truck at a specific location. A deputy was dispatched to investigate and located the truck. A man was standing by it and a young woman was inside. Skid marks suggested that the truck had stopped suddenly.

The deputy approached the man and said he was investigating a report of a fight. The man appeared to be intoxicated. The deputy asked for identification and the man became agitated and kept insisting he had done nothing wrong. The deputy explained he wanted to find out who the man was and what he was doing there. The man began taunting the deputy by placing his hands behind his back and telling the deputy to arrest him. The deputy asked for identification 11 times and was refused each time. After the man was given a final warning that he would be arrested if he continued to refuse to comply, he was placed under arrest.

The man, who turned out to be Larry Hiibel, was charged with "willfully resisting], delay[ing] or obstruct[ing] a public officer in discharging or attempting to discharge any legal duty of his office. <sup>2</sup> " The government argued that Hiibel had obstructed the officer in carrying out his duties under another statute,<sup>3</sup> which states in part:

"1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.

3. The officer may detain the person pursuant to this section only to ascertain his identity and the suspicious circumstances surrounding his presence abroad. Any person so detained shall identify himself, but may not be compelled to answer any other inquiry of any peace officer."

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<sup>1</sup> Hiibel v. Sixth Judicial Court of Nevada, \_\_\_ S.Ct. \_\_\_, 2004 WL 1373207 (06/21/04)

<sup>2</sup> Nev. Rev. Stat. 199.280

<sup>3</sup> Nev. Rev. Stat. 171.123

Hiibel was convicted in municipal court and fined \$250.00. His appeals to the district court and to the Supreme Court of Nevada were unsuccessful. The United States Supreme Court agreed to hear the case.

The key to the application of Hiibel is that in order to avoid a Fourth Amendment violation (and a state law false arrest claim) a person may only be arrested for refusing to identify himself if some statute or ordinance makes it unlawful to so refuse under the circumstances. As the majority acknowledged in Hiibel, “In some states, a suspect’s refusal to identify himself is a misdemeanor offense or civil violation; in others, it is a factor to be considered in whether the suspect has violated loitering laws. In other states, a suspect may decline to identify himself without penalty.”

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Wisconsin has a statute which codifies the right of officers to make Terry stops:

**968.24 Temporary questioning without arrest.** After having identified himself or herself as a law enforcement officer, a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime, and may demand the name and address of the person and an explanation of the person’s conduct. Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped.

Unlike Nev. Rev. Stat. § 171. 123, however, § 968.24 does not impose an obligation upon the person stopped to identify himself. This is a critical distinction.

The Wisconsin Supreme Court has held that mere refusal to identify oneself following a Terry stop does not constitute obstructing under § 946.41, Wis. Stats. Henes v. Morrissey, 194 Wis.2d 338, 354, 533 N.W.2d 802, 808 (1995): “Mere silence, standing alone, is insufficient to constitute obstruction under the statute.”

At present, it appears that the only statutory authority that comes close to the Nevada Statute that was critical in Hiibel is § 343.18, Wis. Stats., which states in part:

**343.18 License to be carried; verification of signature.**

(1) Every licensee shall have his or her license document, including any special restrictions cards issued under s. 343.10(7)(d) or 343.17(4), in his or her immediate possession at all times when operating a motor vehicle and shall display the same upon demand from any judge, justice or traffic officer.

(1m) A person charged with violating sub. (1) may not be convicted if he or she produces in court or in the office of the arresting officer a license theretofore issued to the licensee and valid at the time of his or her arrest.

(2) For the purpose of verifying the signature on a license, any judge, justice or traffic officer may require the licensee to write the licensee’s signature in the presence of such officer.

To invoke 343.18, an officer needs only probable cause to believe that the subject has been operating a motor vehicle and a lawful reason to ask to see the license, which could result from reasonable suspicion that the person has violated a traffic regulation or other law, exercise of a “community caretaker function.”<sup>4</sup> or a lawful “checkpoint” stop.

It is important to avoid misplaced reliance on Hiibel. An arrest without probable cause to believe an offense<sup>5</sup> has been committed clearly violates the Fourth Amendment. Hiibel cannot be relied upon as protection against Fourth Amendment claims unless there is a constitutionally defensible statute or ordinance that requires that a person identify himself upon request by an officer.

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<sup>4</sup> Such as offering assistance to a stranded motorist. State v. Ellenbecker, 159 Wis. 2d 91, 464 N.W. 2d 427 (Ct. App. 1990).

<sup>5</sup> An offense may be a crime (968.07), a traffic violation (345.22) or an ordinance violation ( 800.02(6)).

**2005 Mid-Winter Conference  
The American Club—Kohler  
March 9-11, 2005**

The event is hosted by Chief Bill Rutten of the Kohler Police Department. **The American Club** is one of Wisconsin's most exclusive and unique resort hotels. The room rates for our group only, are \$89.00 per night single occupancy and \$99.00 double. Any overflow will be housed at **The Inn on Woodlake**. The rate is \$62.00 per single occupancy and \$72.00 double occupancy. You must identify you are with the Wisconsin Chiefs of Police group to qualify for these rates.

The telephone numbers for reservations are:

**The American Club  
800-344-2838**

**Inn on Woodlake  
800-919-3600**

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**2005 Annual Conference  
Radisson Hotel and The La Crosse Center - La Crosse  
August 14-17, 2005**

This event will be hosted by Chief Ed Kondracki of the La Crosse Police Department on the bank of the beautiful Mississippi River. Radisson Hotel telephone number is 608-784-6680. Advise them you are reserving for the Wisconsin Chiefs of Police Conference to obtain our rates.

**The Radisson Hotel—608-784-6680**

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**2007 Annual Conference  
100th Anniversary of the WCPA  
Hosted by the Dane County Chiefs of Police Association**

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# **Wisconsin's Law Enforcement Torch Run Officers Running Path to New Fundraising Record**

The officers of the 2004 Law Enforcement Torch Run are on their way to setting a new fundraising record. With eight Polar Plunges, ten ShopKo Rooftop Challenges, nearly 10,000 t-shirts sold and year's worth of local events leading up to this year's Final Leg, more than \$1 million has been raised for the 10,000 athletes of Special Olympics Wisconsin through the Torch Run. Leading to the Summer Games, the Final Leg of the Torch Run is the event of the year that truly shows athletes just how much devotion these officers have for Special Olympics year-round.

On June 9th & 10th, more than 1,000 Officers from more than 30 different kick-off points around the state ran, biked, rode horseback, roller bladed or drove support vehicles while carrying the Flame of Hope to the Summer "Games. Rainy weather did not dampen the spirits of the officers participating in the Torch Run, some of whom biked more than 100 miles to Stevens Point.

However, the Opening Ceremony, which was expected to draw nearly 5,000 spectators and planned to feature a jumbotron generously donated by Kwik Trip, a Special Olympics Wisconsin Premier Partner, were cancelled due to weather.

Through officers were disappointed that the ceremony was cancelled, they stepped up their support of Special Olympics by setting a new record by raising more than \$3,900 at the Law Enforcement Celebration Party raffle. The party also featured a PowerPoint presentation showcasing the day's events as well as Torch Run events throughout the past year. Topping off the evening was the presentation of the most prestigious Wisconsin Torch Run award, the Law Enforcement Torch Run Dale Brunner Hall of Fame Award, presented to Sgt. John Fischer, New Berlin Police Department and Sgt. Gerry Flunker, Appleton Police Department for their exemplary work in support of the Law Enforcement Torch Run for Special Olympics.

To wrap up the officers' weekend, they hosted the softball throw competition as well as the Torch Run tent in Victory Village allowing the athletes to mingle with officer.

The Law Enforcement Torch Run for Special Olympics Wisconsin is one of the best in the world as it surpassed its fundraising goal of \$1 million for the third year in a row, and took three international awards at this past year's international conference in California.

On behalf of the state's nearly 10,000 athletes, a huge thank you goes to all who took part in the 2004 Law Enforcement Torch Run, as well as CARQUEST, ShopKo, and Copp's, the 2004 Torch Run Partners.

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## **National Institute of Justice Researches Body Armor Safety By Mike Foster, University of Wisconsin-Madison Police Department Intern**

The National Institute of Justice (NIJ) became aware of safety issues of body armor after an officer of the Forest Hills Pennsylvania Police force was injured in the summer of 2003 while wearing a Zylon-based protective vest. The officer was shot in the armor, and injured when the bullet successfully penetrated the armor. After learning of the safety issue the NIJ immediately began an investigation and learned of two other instances of Zylon-based vests being penetrated by bullets. As a result of the NIJ's discovery of other instances of protective vest failure Attorney General John Ashcroft ordered an investigation looking into the reliability of both new and used Zylon-based bullet resistant armor along with upgrade kits for older models. Ashcroft also ordered a review of the processes by which armor is certified to determine if changes could be made to improve officer safety.

The NIJ review of body armor began in the early 1970's when the NIJ was trying to develop lightweight armor that officers could wear full time. From this review a NIJ standard was developed that provided requirements and testing of vests so that they could resist penetration from bullets along with minimize the blunt trauma from a bullet that does not penetrate the vest. Since 1987, 2000 different models of vests have passed inspection by the NIJ. The testing, however, has been limited to new model designs and has not addressed degradation of the armor over time and use.

The manufacturer of Zylon admits that the strength decreases due to high temperature, humidity, and exposure to light. The effects of light and humidity can be countered by properly using protective covering for the material but that does not solve the problem of exposure to heat.

The NIJ has tested vests under what it calls the worst case scenario. They requested and received vests that had been exposed to water, detergents, or solvents, exposed to light, and been without the protective casings. The vests were then fired at from a 30 degree angle (the same angle that the Forest Hills officer was fired on). The preliminary results showed that 10 of the 20 armors tested were penetrated by at least one round. The NIJ plans to hold a second round of testing which will offer a much more comprehensive statistical view.

The NIJ also plans on doing much more comprehensive testing within the next year. Those tests will look to see if upgrade kits offered by some manufactures are a safe solution for the problem of material degradation in armor vests. The studies that the NIJ plans to hold for the upcoming year also will look at understanding specifically what causes vests to degrade and to try to find a solution that will allow them to effectively maintain their protective abilities without fear of degradation or the necessity of frequently replacing vests. The final goal of the NIJ is to develop a method of testing a vest to see if any degradation has taken place without destroying the vest. The current test methods render even successful vests unusable for the future, so other testing methods will be explored.

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## WCPA - OFFICERS

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**3rd Vice President- Vacant**

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**Executive Director- Retired Chief Don Thaves, Shawano**

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\* Denotes term on board

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## *Welcome New Members*

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**Hales Corners Police Department**  
**Sponsor: Don Thaves**

Wisconsin Chiefs of Police Association, Inc.  
River Ridge— 1141 South Main Street  
Shawano, WI 54166

Telephone: 715-524-8283  
E-mail: [dthaves@frontiernet.net](mailto:dthaves@frontiernet.net)