



# WVTA Newsletter

## March 2011



[www.wvtroopers.org](http://www.wvtroopers.org)

[wvtaoffice@aol.com](mailto:wvtaoffice@aol.com)

Editor: JW Smith Jr



PRESIDENT JEFF KESSLER



SPEAKER RICK THOMPSON

# Meeting With

# STATE LEADERS



TREASURER JOHN PERDUE

### IMPROVING COMMUNICATION WITH OUR STATE LEADERS

The WV Troopers Association Board of Directors spent time in 2010 meeting with State Leaders, which most recently has included **State Treasurer John Perdue, House Speaker Richard Thompson and Senate President Jeffrey Kessler**. The Board of Directors took the opportunity to learn how each felt and what their positions and thoughts were on the future of our State and discussing the needs and direction of the State Police. This time was also an opportunity for the Board of Directors to provide each with the problems that we face around the State while providing law enforcement services to the citizens. Providing this perspective from those working in the field is an opportunity to educate our State Leaders of real life responsibilities and requirements that we provide on a daily basis with such minimal resources.

(See Communication page 2)

### Governor Appoints

### Carl Robert "JAY" Smithers

Effective March 16, 2011

Governor Earl Ray Tomblin appoints "Jay" Smithers as the Superintendent of the WV State Police. Jay Smithers served as the director of the WV Division of Protective Services (Capitol Police) since 2005. Jay Smithers previously was employed by the State Police between 1973 until his retirement in 1998.

**COMMUNICATION** (continued from page 1)

The opportunity to have discussions with our State Leaders, discussing the lack of manpower, funding, and resources for the State Police is the first step in making improvements. Educating our State Leaders and supporting those that truly support our mission is of the utmost importance.

The average trooper providing the day-to-day coverage to our communities is the best perspective on what our communities need concerning public safety. It has been far too easy for those to forget the daily sacrifices made when putting on the uniform and answering the needs of our citizens. This **RESPONSIBILITY** of educating our State Leaders is **ours** and should not be left to those who do not understand the day to day operations. The **Board of Directors** represented from around the State took this time to share information with the State Leaders on what our communities were in need of.

Sgt Robert A MADDY and his son Jonathan Maddy entered his State Police Cruiser into the Cubscout Pinewood Derby Race. Jonathan won every race.

**WVTA NEWSLETTER**

The WVTA Newsletter is being published by the West Virginia Troopers Association, which will be disseminated to the membership bi-annually. If you have information, an article or something you would like to see, or wish to write a letter that you would like to see published, submit to:

**wvtaoffice@aol.com**  
WV Troopers Association  
210 Chesapeake Ave  
Charleston, WV 25311

**CREATING SOME HAPPINESS**



**HUNTINGTON DETACHMENT** Recently, **Troopers** from the **Huntington** Detachment received information that a very young boy was very ill, who loved Police Officers, was receiving treatment at the Cabell Hunt-

March 12, 2011

Jonathon Maddy setting up prior to the race!

Jonathan now advances to the district race.



Sgt Maddy, his wife Dolly, daughter Emily and son Jonathan. CONGRATULATIONS:



ington Hospital. The Troopers learned that the young boy had spent more time at the hospital than he had at home. **Trooper First Class Jason Crane, Senior Troopers Willis Hash, Stuart Swope and Thomas Tippet** of the Huntington Detachment went on a search for gifts for the kids and traveled to the ICU at Cabell Huntington Hospital where they met with nine (9) amazing children who were receiving treatment at the ICU.

Troopers know that their toughest days are nothing compared to the treatment that the young children fighting cancer face day in and out. It is a real pleasure to see the expressions on the children's faces bringing happiness to them during such difficult times.

# 2011 LEGISLATIVE SESSION

## 191 BILLS PASSED THE REGULAR SESSION

The 2011 Legislative Session began with changes in the Senate's leadership upon Senate President Earl Ray Tomblin filling the vacant position of Governor after Joe Manchin was elected to the U.S. Senate in November. Acting **Senator Jeffrey Kessler** obtained the votes of the Senators to amend the rules and create the position of acting senate president. This amendment to the rules in the Senate brought with it a new leadership within the Senate which included many of those that were previous supporters of increasing the manpower of the WV State Police. This however did not prove to be as rewarding as we would have anticipated at the conclusion of the session. With strong support from the **House, HB2791** which would have required the superintendent to implement a plan to increase the number of State Troopers to **800** by **2015** passed that chamber. This legislation then crossed over to the Senate and was referenced to Senate Finance, chaired by Senator Roman Prezioso (Marion County). Chairman Prezioso refused to put this piece of legislation on the agenda within his committee and only after many request from fellow Senators he put this legislation on the agenda on the last day of the session, with an amended version of the bill which eliminated the increasing of State Troopers and inserted language which required the Superintendent to conduct a study to determine the number of Troopers needed and report back to the legislature in January 2012. This delay of addressing the problem was very disappointing and was clearly just another way to avoid addressing the needs of the State Police. Leadership within the House realizing that this amended legislation did absolutely nothing refused to entertain such an amendment from the Senate and failed to accept the legislation as amended.

Legislation was also sought and passed the legislature which corrected a problem identified within the law upon re-certification of disability retirees. **HB2863** passed which provides an avenue for the Superintendent to re-instate such members to their rank and appropriate retirement system.

Legislation that had the support from many Law Enforcement agencies, requiring a prescription for medicines containing ephedrine, failed to pass the WV Senate ending with a tie vote. The intent of the legislation was to curb the production of methamphetamine. The opposition of the bill represented that it would be harmful to the seniors and those on fixed incomes.

The following legislation of interest completed the legislative process and will now be awaiting the Governor's signature:

**SB186** – Relates to issuing subpoenas to aid in criminal investigations involving certain crimes against minors

**SB193** – Expands the responsibilities of the Law Enforcement Training Subcommittee and requires the establishing of a database of LE Officers disciplined for certain types of misconduct. WVTA was added to this subcommittee.

**SB256** – Requiring Sex offenders verify email and online identities

**HB2159** – Prohibiting members of the news media from being compelled to give testimony

**HB2505** – Adding synthetic cannabinoids, hallucinogens, and stimulants to Schedule I controlled substance

**HB2863**- Establishment procedure for reinstatement of disability retiree if condition no longer prevents from performing the duties of a law enforcement officer

**HB2879** – Pay bill

**HB3105** – Providing immunity from civil or criminal liability for first responders who use forced entry to a residence (Concerning medical assistance)

The following legislation of interest failed to complete the legislative process:

**SB421/HB3022** and **HB2791** all related to increasing the manpower of the State Police

**SB422/HB3168** –Provides State Police for on-call and a housing stipend for the top five counties

**HB2946** – Requiring prescription for drug products containing precursors of meth

You can visit the online store to view a wide selection of items made available online

**W  
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**Navy-Gray Golf \$32**



**Green T-Shirt sm \$10.00**

[www.wvtroopers.org](http://www.wvtroopers.org)



**Ford Cruiser \$15.00**

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## 4th US Circuit Court of Appeals CONCERNING NO-KNOCK SEARCH WARRANTS

(No. 10-1115)

DECIDED: January 11, 2011

BELLOTTE v. EDWARDS

On May 31, 2007, Sam Bellotte had some photographs printed at a self-service station at a Walmart in Winchester, VA. When he went to pay for the prints a clerk insisted on inspecting the photo's at which time Mr. Bellotte admitted that some contained nudity and surrendered them where a photograph depicting the genital area of a male near the face of what appeared to be a female child. The Walmart employee concerned that it was child pornography notified the Frederick County police. A criminal investigation began learning the suspect resided within Jefferson County, WV. A search warrant was obtained and the Jefferson County Special Operations Team assembled for execution of the warrant where a dynamic entry occurred without knocking or announcing their presence.

Mrs. Bellotte and her children brought civil actions against the officers involved in the search. On December 29, 2009, the district court ruled that the defendants (law enforcement officers) were not entitled to qualified immunity from the plaintiff's 4<sup>th</sup> amendment claims regarding the no-knock entry and excessive use of weapons. The court heard arguments from both sides concerning the no-knock entry to determine if this was a violation of the 4<sup>th</sup> amendment. (The knock-and-announce requirement has long been a fixture in law. Before forcibly entering a residence, police officers "must knock on the door and announce their identity and purpose.) *Gould v. Davis*, 165 F.3d 265, 270 (4<sup>th</sup> Cir. 1998)

"In order to justify a no-knock entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." *Richards*, 520 U.S. at 394

Cases addressing the justifications for no-knock entries speak primarily in terms of officer safety. ("Without question, the failure to knock and announce prior to entering a home can be justified by a fear for officer safety.") *United States v. Lalor*, 996 F.2d 1578, 1584 (4<sup>th</sup> Cir.1993)

Qualified immunity is meant to protect against liability for "bad guesses in gray areas." *Maciariello v. Sumner*, 973 F.2d 295, 298 (4<sup>th</sup> Cir. 1992). The court ruled that this was not a bad guess in this case. The

court affirmed that the district court's holding that this no-knock entry violated the Bellottes' clearly established constitutional rights and does not warrant an award of qualified immunity. The court however granted qualified immunity as to Mrs. Bellotte's excessive-weapons claim both against her and her children for the display of weapons, and the district court is accordingly reversed on that ground.

The court recognized that police officers executing search warrants must often make momentous decisions in minute amounts of time. **Qualified immunity** provides critically important protection when a reasonable decision in the line of duty turns out to be a bad guess. But when the officers **failed to knock and announce** their presence under these particular circumstances they transgressed the boundaries identified by this circuit and violated clearly established federal law. They may not now seek the shelter of immunity for that claim.

*In order to justify no-knock entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances would be dangerous or futile, or that it would inhibit the effective investigation of the crime*

Tuesday January 11, 2011

### Court rules W.Va. police raid excessive

by The Associated Press  
The Associated Press

RICHMOND, Va. -- A federal appeals court says police went too far when they barged into a West Virginia family's home without first knocking and announcing their presence.

A three-judge panel of the 4th U.S. Circuit Court of Appeals on Tuesday affirmed a Martinsburg judge's decision that police are not immune from being sued by Tametta Bellotte and her two children

Jefferson County officers raided the family's home looking for evidence of child pornography after Sam Bellotte printed photos containing nudity at a Winchester, Va., Walmart. Sam Bellotte was not home at the time of the 2007 raid.

Police said they didn't knock because they knew the Bellottes had concealed-carry permits and they feared a violent reaction. The court said that wasn't sufficient to justify a no-knock entry.



## A Message From The CWA/NCPSO International Representative

April 4<sup>th</sup> was the 43<sup>rd</sup> anniversary of the assassination of Dr. Martin Luther King, Jr. Dr. King had joined city sanitation workers in Memphis, Tennessee who were fighting for the right to bargain collectively for a voice at work and a better life. Today, that same right is being trampled on by legislators and policy makers in several state capitols across the country. The spin that is being made is that public employee salaries and benefits are the underlying cause of budget problems that have gripped state and local governments across the nation.

Public employees didn't deregulate the financial services industry or promote complex and risky investments like derivatives. The pensions didn't push Wall Street to a crisis.

The people who are on the front lines make it all work – the fire fighters who run into burning buildings to save us, the law enforcement who provide for our public safety and protect us at the risk of taking a bullet, the nurses who provide patient care or the telephone worker who keeps our lines of communication working – we are not the problem.

Public sector workers did not lose trillions of dollars in risky Wall Street investments. Wall Street money managers did that, not ordinary working people like you and me.

Too often certain politicians like to play the blame game and we can no longer allow this to happen. Whether it's in Wisconsin, Ohio or here in West Virginia we have to hold all politicians accountable – either they're with us on our issues such as increased manpower, pay, benefits including pensions and health care, or they're against us. There is no in between.

While we don't have a collective bargaining law here in West Virginia (I often refer to us as having "collective begging" to the legislature) we do have bills that have been passed into law that are in code and statute that provide compensation and other forms of benefits. These things have the very potential of being under attack by those who want to diminish or do away with them.

On Monday, April 4<sup>th</sup> – workers joined together nationwide with activities ranging from rallies to something as easy as tying a red ribbon on their vehicle antenna as a sign of all workers standing united for a voice at work and to condemn efforts to take away our basic rights.

We must never give up - be involved and be united!

Elaine A. Harris  
CWA International Representative

### **Kenny Perdue: Safety workers need bargaining December 18,**

2010 CHARLESTON, W.Va. -- Firefighters, police officers and emergency medical personnel risk their lives every day to protect the public. Nobody knows better than they do what should be done to keep their communities safe. They need to have a voice in their own safety and the safety of others. While this seems like a sensible standard, today in many states, firefighters and police officers are still told to be seen, not heard, even though they are the ones most familiar with public safety concerns such as safe staffing levels and the training required to do their jobs effectively. Now factor in an economic crisis where our public safety officers, along with all public employees, are affected by huge layoffs and budget corner-cutting. In this environment, public safety employees need a voice more than ever. The most effective avenue for workers to be heard is through collective bargaining, which provides a forum for employers and employees to work together to tackle the most difficult issues facing their profession and their mission. This forum has been proven to produce measurable staffing, training, equipment and health and safety improvements throughout the nation's fire and emergency response departments, resulting in improved local emergency response capabilities. When public safety employees have a voice, they can work together with management to solve state and local budget shortfalls. During the current recession, firefighters across the country are not only offering up concessions through collective bargaining to balance municipal budgets, they're doing it in a way that saves jobs and prevents layoffs. Congress needs to pass legislation that will provide many of the same rights federal government employers provide by requiring all states to permit public safety officers to discuss how they do their jobs. The Public Safety Employer-Employee Cooperation Act, which is co-sponsored by Republicans as well as Democrats, will do just that. The bill gives maximum flexibility to states to craft their own laws giving firefighters and police officers the ability to sit down and talk with their employers. For critics, let's get some of the myths out of the way. The bill does not give public safety officers the right to strike; does not require binding arbitration to resolve disputes; does not take away the authority of states and local jurisdictions to have the final say over all public safety decisions; does not require any specific method to certify unions; does not infringe on the rights of volunteer firefighters; and does not require all public safety workers to become union members. Firefighters and police officers are our most trusted public workers. They want to be part of the solution and they deserve a voice. The time has come for Congress to finally grant all public safety officers the basic right to come together to discuss how they perform their vital, life-saving duties for their communities. Perdue is the president of the West Virginia AFL-CIO, a group of more than 550 unions.

# ATTACKS ON LAW ENFORCEMENT OFFICERS

**Law Enforcement officers killed in the line of duty jumped 37% in 2010**

The Department of Justice announced in January that it is beginning to review a rash of deadly attacks following the fatal shootings of ten police officers since January 1, 2011. Two thousand and nine ended with a twenty three percent (23%) increase with law enforcement officers being killed nationwide by gunfire. Two thousand and ten deaths of Law Enforcement officers killed in the line of Duty jumped thirty seven percent (37%) with fifty-nine law enforcement officers being killed.

In West Virginia the trend of violence towards Law Enforcement is also being echoed. On August 11, 2010, forty-five year old Joseph Harrison kidnapped a UPS driver and forced him to travel to the State Police Detachment located in Elizabeth where he began shooting at the detachment with a rifle, which ended with Cpl D.P. Starcher having to shoot and kill Joseph Harrison to protect the life of Deputy Wilson who also responded to the shots fired call at the detachment. On February 16, 2011, US Deputy Marshal Derek Hotsinpillar, age 24, was shot and killed by a suspect sitting in wait with a shotgun while Deputy Marshals and State Police officers were in the process of executing a search warrant. The suspect was prepared for an encounter with law enforcement at the residence within Elkins where the suspect had been avoiding the arrest from an active warrant issued in 2006 for drug related charges. The suspect was shot and killed by members of the State Police and US Marshals during this.



The trend of fatal ambush-style officer shootings are up raising concern about officer survivability. Practical hands on force on force exercises will surely be developed and implemented following the Department of Justice's study within the academy and training environments for law enforcement as a result of the rising trends of violence towards law enforcement officers in an effort to minimize the risks.

**Troopers Helping Troopers**

"CONTINUING TO HELP" our own during rough times has been tradition for our members of the WVTA. Unfortunately we sometimes find ourselves in times of need due to unexpected events. Your association is committed to ensuring that help is provided to our own when these times come upon us.

The WVTA has entered into contract T&T Rettig for the production /publication of the WVTA Magazine. Ads will being sold across the State to cover the cost of the magazine.

## WVTA MEMBERSHIP BENEFITS

- \$5000 Line of Duty and Accidental Death Benefit for active duty Troopers
- \$5000 Life Insurance on member and family (\$2500 for spouse and \$1000 for children)
- Affiliation with CWA (Local 2019) which provides a full time lobbyist {Elaine Harris} - with an additional \$3000 accidental death and dismemberment benefit (\$500 spouse and \$250 child)
- Legal Advice from the Office of Masters Law Firm and Representation if needed upon approval of the Board of Directors
- Lobbying for Trooper causes - (Pay, Benefits, Manpower, Equipment, etc)
- Bi-Annual newsletter
- Membership with the National Troopers Coalition
- Annual Conference/Trooper of the Year
- Sponsorship of golf Tournaments made available to membership
- Voice to State Police Leadership and State Leaders with WVTA Office with employee and merchandise sales
- Hardship/Emergency Relief Assistance to members and families
- Competitive Scholarship Program
- Self Satisfaction knowing that we help those who protect this State

## **WVTA Presidents Message:**

### **DECISIONS:**

Each and everyday we find ourselves making decisions that are questioned, critiqued, and scrutinized by many. Many of our decisions then fall into a process that takes many years for someone to make the determination if the decision that was made was correct.

During the previous years, we have absorbed budget cuts, reductions in manpower, and difficulty filling vacancies within our ranks due to concerns over additional proposed budget cuts. Even though the State has over **\$631 million** in the rainy day fund and we have finished with huge surpluses each year with **\$250 million** in surplus expected this year. We were then witness to changes that took affect eliminating affordable health care for all new employees hired after July 1, 2010 upon reaching their normal retirement age. It was clear that the education efforts over the previous decade concerning the lack of manpower and underfunding had fallen on deaf ears and that a new approach must be taken to ensure that Public Safety was not forgotten.

Legislation was then sought that would address the lack of manpower and task at hand to ensure that each of our State leaders was provided the information concerning our growing responsibilities and lack of manpower to ensure that each involved within the process concerning our budget was aware of our needs. This approach would allow us to identify those that were not supportive of public safety and identify any additional problems that needed addressed.

At the beginning of our informational campaign with our State leaders it was routinely discovered that our State Leaders would state that they had no knowledge that we were so undermanned. After working within our Governmental process, which I must admit is much more complicated than it needs to be concerning Public Safety, I quickly learned that we are at fault as well for their lack of knowledge and we must do a better job at making sure that those that are most qualified in sharing this information, which are the law enforcement officers providing the day to day services, inform our State leaders of the needs of law enforcement. We must continue to work on improving this communication with our State leaders, working to correct and prevent the loss of manpower, pay, and benefits.

During the previous year, the board of directors has interviewed many of our State leaders, which have included **Senators, Delegates, Supreme Court Justices, US Senate candidates and many who are running for Governor**, allowing each representative to learn where they stood with the State Police. This process has ensured that the memberships' interest were being addressed, not that of individuals. Finding solutions to our problems are not easy, but standing aside and doing nothing to find these solutions will surely find us without our much needed resources. It has become far too easy for our State leaders to isolate themselves and then later place **BLAME** elsewhere on the problems that have been created within our department. I urge each of you to make the **DECISION** and not allow this to happen. We must hold those accountable that fail to support **PUBLIC SAFETY** and fail to support them when they seek to maintain a position within our State Government.

## **THE WINDFALL ELIMINATION PROVISION**

### **What is the Windfall Elimination provision (WEP)?**

**It reduces the earned Social Security benefits of an individual who also receives a public pension from a job that was not covered by Social Security.**

### **Who will this affect?**

**This will affect those of us who have worked as public employees that were not covered by Social Security and also in jobs in which we did pay into Social Security. For example, if you served in the military, retired or worked another job where you paid into prior to coming to the State Police.**

### **How will this work?**

**The WEP will reduce the factor by which average earnings are multiplied to determine Social Security Benefits. There are many factors on determining how much this will be reduced and also on when the individual becomes eligible to retire and how many years of earnings he or she has accumulated.**

WEST VIRGINIA TROOPERS ASSOCIATION



**LAW ENFORCEMENT  
3 GUN CHALLENGE**

LAW ENFORCEMENT AND RETIRED LAW  
ENFORCEMENT ONLY  
SATURDAY AT 9:00; SEPTEMBER 10, 2011  
\$20 ENTRY PER PERSON

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RALEIGH COUNTY

SHOOTERS WILL NEED 150 RIFLE ROUNDS  
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McNeer, Highland, McMunn and Varner, L.C.  
Attorneys at Law



LORA B. SNODGRASS  
(Wife of Sgt. B.S. Snodgrass)

Is now accepting new clients in the areas of estate planning, wills,  
powers of attorney, medical powers of attorney, and living wills

50% discount for members of the West Virginia State Police  
and their immediate families.

The law office of McNeer, Highland, McMunn and Varner, L.C. is a full service law  
firm who can handle all of your legal and litigation needs. Call for an  
appointment in your area. Free telephone consultations available.

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Parkersburg, WV 26102  
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Toll Free: 888-854-2973

Other Office Locations

Clarksburg  
626-1100

Martinsburg  
264-4621

Kingwood  
329-0773

Elkins  
636-3553

Resident Director: Steven R. Bratke

Contact Attorney: Lora B. Snodgrass for all locations



“It’s not the size of the  
dog in the fight, it’s the  
size of the fight in the  
dog”

**CWA MEMBER BENEFITS**

In addition to the benefits of a strong voice and representation  
your union membership brings you a wide range of money saving  
Union Plus benefits and services.

From discounts on everything from flowers to travel to help buy-  
ing a house or going to college, the Union Plus benefits work for  
you and your family. You can find a long list of benefits at:

**www.UnionPlus.org**

“Action speaks louder than words but not  
nearly as often” Mark Twain

**UP-COMING DATES**

WVTA Golf Tournament - June 15-17, 2011 (Barboursville)

WVTA Conference - June 18, 2011 (Charleston)

WVTA 3 Gun Match - September 10, 2011 (Beckley)

**Important**

-Update your insurance information with the WVTA  
Office to ensure accurate information is on file.

-Email the [wvtaoffice@aol.com](mailto:wvtaoffice@aol.com) with updates.



The  
**MASTERS**  
Law Firm Lc

Marvin W. Masters  
Richard A. Monahan  
Charles M. Love, IV  
181 Summers Street  
Charleston, West Virginia 25301  
1-800-342-3106

Legal Representation

-Legal advice- duty related matters contact Masters Law Firm

-Legal Representation- contact your WVTA representative or executive board for  
board approval

WVTA Executive Board

President	John W. Smith Jr
V. President	Lonnie Carpenter
Secretary	Greg Baker

WVTA Board of Directors

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Troop 1	Wayne Vessels
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