# The Bill Blackwood
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## Vicarious Liability
## &
## Immunity from Suit

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An Administrative Research Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College

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# ABSTRACT

This research is conducted for law enforcement administrators. It is a widely held belief that most administrators of small law enforcement agencies (county and city) are misinformed regarding civil liability issues. The author surmises that most administrators do not wish to acknowledge the lack of training, or the lack of knowledge regarding liability issues. There are areas of liability that county and city officials are aware of such as: jail issues, excessive force, and false arrest. The lack of knowledge regarding the overall scope of these liability issues could seriously affect administrative agencies. By surveying agencies in Texas by conferences, meetings, class surveys and with a follow-up mailing, administrators admit knowledge, but hedge on the issues written regarding this topic. Some individuals may not want to answer, some may not know how to answer, some may feel this is not their problem; some will have their house in order on liability issues. The author will inform those administrators who wish to listen to the warning contained in this article so they will not pay in court. Also, the attention paid to the information in this text is easier reading and less expensive than the legal jargon in official court documents. The author of this text was one who supposedly had “all” of the answers early on as a chief administrator, but was fortunate that the many lessons that were learned were not as expensive as they could have been. To avoid the costs of litigation, the information contained in this research will ideally assist administrators with guidelines addressing the various areas of liability. This research cannot prevent suit from occurring, but may mitigate damages.

## INTRODUCTION

The problem or issue to be examined considers whether or not law enforcement officials are adequately trained and skilled in vicarious liability issues and how best to prepare before suit issues arise.

The relevance of vicarious liability and immunity from suit to law enforcement is not if a suit will occur but when suit occurs. Have sufficient preparations been made by departments to defend themselves from successful suit? What are those preparations and what knowledge should an administrator have to make those preparations.

The purpose of this research is to inform administrators about these areas that are most vulnerable to suit. This paper will address the topics used in liability cases and how to best address these issues. When issues of liability are addressed before suit, immunity issues are easier to defend.

The research question to be examined focuses on whether or not administrators are equipped with sufficient knowledge about liability issues they may encounter in their career and how best to prepare and educate themselves for immunity to be more accessible.

The intended method of inquiry includes: the review of written articles, personal experience, research papers, personal interviews, survey of LEMIT modules I & II participants, survey at law enforcement meetings in the Texas Panhandle and e-mail. The e-mail was least successful with only one response to one hundred sixty -four. Having captives when research is being conducted gives more information than voluntary responses.

The intended outcome or anticipated findings of the research is to determine whether or not administrators have sufficient knowledge or training prior to suit to help mitigate damages when suit occurs. Maybe this paper will tweak interest of an unpopular issue that will eventually have to be addressed by all administrators during their career.

The field of law enforcement will benefit from the research or be influenced by the conclusions because all administrators are in need of continuing liability training in our environment: as we are susceptible to suit from any direction as long as we work for a governmental agency.

## REVIEW OF LITERATURE

Deliberate indifference by Michael Callahan outlines what is best described as what we in law enforcement would collectively concur that would be deliberate indifference. Law enforcement officers must be way outside the box of standard or routine behavior and allowed to remain there with out corrective measures being implemented or affected. Law enforcement must act consistently outside policy and procedure without being corrected by supervision to be held by the courts to be deliberate indifferent. When an agency remains outside written procedure or policy for any length of time this establishes new policy and procedure. Callahan addresses failure to train personnel in critical positions and allowing supervision to remain without providing proper training. This article addresses court cases that outline the parameters of suit for law enforcement. The author believes that the administrator’s failure to address areas of potential liability for suit, he/ she is setting their agency and themselves for suit.

Just touching on some cases (outlined in the 2000 international association of chiefs of police conference), the presenter Elliot Spector, Esq. of the Connecticut criminal law foundation center for police and security training. This touches on all areas of suit addressed in this research. Kappleler (2001) outlines all the areas of state tort and federal liability and issues concerning both state and federal litigation. Kappleler (2001) suggestions benefit when law enforcement addresses areas of critical wrong doings. The Borger police department in the early eighties was the poster child of the failure to train and failure to supervise officers in a wrongful death suit. After losing and settling out of court for a large sum, the Borger Police Department has addressed these issues and now trains supervisors and officers. Kappleler (2001) addresses historical and defenses to police liability in state tort actions and identifies the historical areas of immunity covered in the conclusion of this research. When administrators address areas of critical liability, they improve their chances in defending their returns in state and federal courts.

Eskow (2000) addresses qualified and official immunity, covering two forms of immunity available to local government officials and public sector employees sued in their individual capacities. This research covers most areas related to law enforcement qualified immunity issues. Franklin (1993) outlines a litigious case and chronicles how the case progresses and is built and defended. More importantly, Franklin's text follows other writings on building qualified immunity and addresses the broad areas of federal litigation. This book reaffirms how important and how savage suits may become in federal court settings. Each court is guided by the personality of the Judge sitting on

the bench, what is allowed to be heard by juries, and the instructions of the Judge to the jury prior to the jury going into deliberations.

Franklin (1993) gives great insight into the scope of this research and addresses areas that this writer believes is important for all administrators to follow. The Effect of Vicarious Liability Litigation on the Attitudes and Procedures of Police Administrators in the State of Texas was a thesis presented to the faculty of the College of Criminal Justice Sam Houston State University by Donald R. Leach in May of 1989. This particular thesis guided the author in the areas to be addressed and condensed the information for quick reading. The hope of the author was to give the carnation milk version of the material by taking the fat out and leaving the substance material in place. Most administrators want quick accurate answers and reference materials instead of books. Lastly, the author will survey law enforcement personnel using age and tenure as the thumbnail to establish attitude and education for areas of vicarious liability. Also the author will attempt to project based on returns of the survey if there is a problem in attitude of administrators about liability and if so is it geared to locale, size of agency, or experience in civil litigation.

According to Leach (1989):

> The expansion of vicarious liability law suits filed in the United States may be attributed to the following factors: increases in the number of lawyers, crime, and public awareness; too many new lawyers without enough business encourage the acceptance of litigation in a frantic effort to generate law practice revenue to survive; more laws are being proposed to protect individual rights;

> Judicial appellate opinions, especially in Texas, have significantly expanded both the types of claims upon which recoveries can be biased as well as damages; immigration and population increases have been significant. The immigration and the injection of aliens into the population will continue to result in substantial population increases, which in turn will as a mater of statistical probability alone, result in increased litigation not merely *per se* but also moreover on a *per capita* basis. In addition, language barriers and mores differentials will result in some misunderstandings and suits; public awareness not only through media reportage but also through media editorializing has made the public aware that litigation against law enforcement professionals in now fairly common; finally, the criminal element often uses civil litigation against law enforcement professionals simply as an effort to obtain dismissal of criminal charges on the theory that the prosecution will be willing to trade out the dismissal of a civil damage suit against law enforcement personnel in the arrest or prosecution of the criminal defendant. (p. 17)

All state actions against citizens are protected from tort actions by the Government in United States Code {42 U.S.C. $ 1983}:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any stat or territory, or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction there of to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (p. 20).

According to Leach (1989):

> The landmark case that broadened the scope of civil liability for government was *Monell V. Department of Social Services* ruling that local governmental entities are indeed Persons to whom 42 U.S.C. $ 1983 and are not immune from suit. Later *Owen V. City of Independence,* the court held that municipalities may not assert a qualified immunity defense, or privilege based upon the good faith of the official involved in the deprivation of rights guaranteed under 42 u.s.c. $1983 and the United States Constitution. (pp. 20-21)

It is evident that the Supreme Court has expanded to city, county and state governments liability where at one time was protected by absolute immunity. Times have changed and those same rights will be expanded when the court becomes less conservative. Having an active court has been traditionally good for individual rights. Rulings that affect social changes and how law enforcement and government treat offender citizens and minorities have been resisted but implemented. Education and law enforcement had the most difficult time in implementing Court ordered changes and those changes do no occur overnight. The equalizing of rights was imperative for the future of America but to some a bitter pill to swallow.

Another area of interest in the protection of governmental protection from suit is in the area of carefully constructed policies. In Atwater vs. City of Lago Vista (No-99-1408, April 24, 2001), it is suggested that what can be done should not always be the best direction to take in all circumstances in reference to fine only arrests in lieu of citation.

When considering vicarious liability, civil liability of police administrators is the broadest area if not the only area that is capable of ruining the reputation and financial security of the individual and the agency employing him/her. It is the intent of this author to share personal experiences as a law enforcement administrator and events creating broad liability. When an administrator is accused of tapping the phone of a plaintiff, who does not have a phone, and tapping all the pay phones in a community with listening devices is beyond comprehension of reasonable minds. When a plaintiff alleges by court petition that you as an administrator has retained personnel by faulty retention and failed to train personnel. The aforementioned examples are allegations that have to be answered in civil suit actions.

The examples of actual lawsuits given above were to inform as well as prepare an administrators' defense for liability issues even before they occur. These areas must be anticipated as well as acted on prior to the action and before the suit occurs. It is the belief of the writer that one is not very capable of preventing a suit but is capable of defending against a successful suit.

The author brings with him twenty-five years of experience: sixteen as the administrator of a Sheriff's office and 2½ as Chief of Police. However, this does not indicate that the author of this research is an expert in the field of civil liability. What it does indicate is that the writer has experienced some of the pain of being a defendant. The experience of being named as a defendant in a suit is not pleasant; but when one is named as a defendant individually and not in the official capacity of the office held is even more unpleasant.

The success of an individual capacity suit is rare but in certain circumstances possible. Individuals who seek damages from law enforcement officials as individuals is not a reasonable avenue because for the most part law enforcement officials do not have large amounts of assets; that area is not as financially lucrative for the plaintiff as is the going for the deep pockets of the City, County, or State.

However, some plaintiffs' who seek vindication and retaliation through individual acts of the administrator or officer will find cracks in the defense and become successful in suit. The writer will address these areas of immunity. The pitfall for suit by administrators is 'deliberate indifference'. The area of deliberate indifference will be discussed in depth in the paper. Administrators that possess bad tendencies when hiring, in training, poor discipline, lack of policymaking, faulty procedures, bad retention, insufficient background checks and the daily activities and routines of his/her departments inattentively paint targets for suit on themselves.

An administrator who refuses to acknowledge and ignore problem personnel or practices is the kindling for a major suit, and is smoldering, just waiting for circumstances when ignited consume the administrator and his/her agency's reputation and resources. When an administrator earns a reputation of indifference, the possibility of advancement or employment is severely restricted if not impossible.

This research is not concerned with an individual's future in law enforcement but the preservation of constitutional rights of the citizen offender and public safety.
This research will emphasize the importance of training, retention, and discipline practices by the administrator and the daily routine of police work. These protections are not difficult to implement within an agency. The essential element is the

identification of problem areas and addressing the problem. One must be realistic and know that suit will happen and nothing can be done to prevent suit. The key is addressing the problematic areas as affectively as one can and successful suit may be avoided. The courts have been lenient on law enforcement when following *good* policy, procedure and custom. However, when law enforcement has bad habits, little or nonexistent policy the courts have been less than kind. Even worse, when individuals under color of law violate the laws they are enforcing, have been individually penalized with government being held accountable, thus causing the narrowing of the courts allowances of police actions. “Bad Cop” makes good constitutional example.

‘Standards’ setting is a goal that pays dividends not seen until the dreaded suit word is played. Setting standards can be subtle or drastic depending upon the experience, the present actions and of the future expectations of the agency. Some agencies need minor tweaking while others need a major overhaul of doing business in the criminal justice world. When addressing the problem of civil liability one must ask what are we doing properly, and what are we doing that is suspect. One false belief is that through accreditation liability is moot. Accreditation can and is only as good as the administrator who manages his/her department. This research will only mention and not defend or denounce accreditation.

How we conduct our daily business, dictates the amount of civil damage that may be awarded in successful suit. Vicarious liability exists automatically with a position. Liability is upon an individual without regard to tenure. Taking an oath of office dumps liability in the lap of the administrator immediately; there is no grace period for liability.

Questions must be asked soon after the taking of office in the status of the practices of the agency that is employing the individual administrator. Questions that need to be answered immediately should start out as follows: What areas have our practices been called into question and how are we and were we able to address the problem?; When we are not able or willing to affirmatively address problems, then there exists an area of potential suit and what are we willing to sacrifice for failing to address these issues?

"Who is Vicarious Liable?" "You are! Because of whom you have become"! To avoid deliberate indifference, we must decide early on to protect our agency, its personnel and the head of the department. We must review policy, procedure and everyday work practices that will, when challenged, be sufficient as to dictate custom and policy. When we decide to monitor the daily operations is when we as administrators begin to get a grasp on how policy is made by custom and practice. When we allow a bad habit to go un-checked, we establish policy regardless if it is written or not. When administrators allow bad behavior to dictate bad policing procedures we dictate bad policy (written or not).

The Supreme Court adopted the standard for deliberate indifference in City of Canton, Ohio v. Harris 109 S. ct. 1197 (1989). For example:

> In Canton, the plaintiff was arrested for a traffic offense and after refusing to cooperate, was carried to the patrol wagon because she could not or would not walk on her own. Upon arrival at the police station, she was discovered on the wagon's floor and responded incoherently when a shift commander asked if she needed medical attention. During booking, she fell off a chair several times and was allegedly left on the floor to prevent further injury. No medical attention was

summoned by the police. After being released, she was transported by private ambulance to the hospital where she was diagnosed as suffering severe emotional ailments and was hospitalized foe a week. She sued under Section 1983 , alleging that the city deprived her of a constitutional right to medical care by failing to adequately train officers at detention facilities in deciding when prisoners require medical attention. (n.p.)

According to Harris v. Cmich (1986):

Trial evidence disclosed that it was city policy to give shift commanders sole discretion to decide when a prisoner needed medical care and that these commanders received no special medical training to assist them in that decision. The jury returned a $200,000 judgment against the city, and the U.S. Court of Appeals for the Sixth Circuit affirmed that the proper standard for municipal liability regarding inadequate training is gross negligence. (n.p.)

In a landmark decision, the U.S. Supreme Court reversed that lower court ruling and held that inadequate police training can serve as the basis for liability only where the failure to train amounts to deliberate indifference by city policymakers to the constitutional rights of persons contacted by police officers. By adopting the higher deliberate indifference standard, the Court rejected the gross negligence standard that had been adopted by many lower federal courts. The court explained “that inadequate training meets the deliberate indifference standard only when the need for more or different training is obvious and the failure to implement such training is likely to result in constitutional violations” (p. 7). The adoption of the deliberate indifference standard makes it more difficult for plaintiffs to win 1983 actions because it eliminates jury

consideration of differences in training programs unless plaintiff can prove that the need for more or better training was obviously needed.

> The Court gives two instances of what would constitute deliberate indifference are when city policy makers know that officers are required to arrest fleeing felons and are armed to accomplish that goal, the need to train officers in the constitutional limitations regarding the use of deadly force to apprehend fleeing felons is obvious, and the failure to do so amounts to deliberate indifference. The second, deliberate indifference could be based on a pattern of officer misconduct, which should have been obvious to police officials who fail to provide the necessary remedial training. (n.p.)

"Departments can do many things to avoid the civil liability issues arising because of a failure to train its officers. Ensuring that these precautions are taken should be one of top objectives of any police administrator. Probably no other issue will drastically ensure your department's resiliency more than properly training your officers" (p. 7). Ross also noted four areas that should be closely adhered to in aiding in civil defense of suit. First, have an internal assessment of routine tasks all officers and supervisors perform on a routine basis" (p. 7). Second, after assessment of training topics is completed and reviewed follow up training correctives should be completed paying attention to a yearly evaluation of current issues. Examples would include: the use of force, search and seizure, and pursuit policies. Third, the continuing education of supervisory personnel on key issues relating to their tasks, and insuring that supervisors' capabilities are geared to those areas of responsibility. The documentation of training of those supervisors and qualifications of those supervisors assigned to those

areas of supervision. Fourth, TECELOSE has insured that each department has maintained current training requirements; however departments must go further than mandated training for officers and train officers for the tasks they are expected to perform. This area will impact the departments to demonstrate proper training and the willingness to adequately train supervisors and officers.

Faulty retention reflects the continued employment of an unfit officer in the police service when he or she has reflected incompetence, dishonesty or severe ethical problems. Failure to train is the most successful area of suit is firearms training and the broad area of the use of force. This area includes the appropriate use of force, the elements of shoot - don't shoot situations. The area of the use of force in arrest and pursuit driving has been broadened by the courts to include all aspects of restraint including less than deadly uses of force (i.e. chemical agents, '*tasers*' & personal restraints). When an agency cannot demonstrate training and documentation in these areas will increase the probability of successful suit.

Improper supervision is the failure to adequately supervise by competent supervisors is an issue that the Borger Police Department and numerous other agencies have experienced. In Grandstaf v. City of Borger (1982), patrol officers were involved in a pursuit that resulted in the death of an innocent ranch foreman (Grandstaf); at the time of the incident, the department had no supervisor on duty and the officers had little or no training in pursuit and the uses of force including deadly force. Attorneys have exploited this area and this area is hard to defend unless documentation can be produced in training of supervisors as supervisors and their

duties. This area mandates immediate attention if training has not been afforded those personnel who supervise others.

Improper assignment: some officers are not suited for particular assignments, most small agencies do not have the luxury of making personnel assignments based on an officers capabilities. Sometimes these discoveries are not made until after the improperly assigned officer has created a situation of liability for the agency.

Inadequate hiring practices in the law enforcement profession, as well as most professions, will not share information about individuals who have left an organization for less than desirable conditions. These situations occur more frequently than most administrators will want to admit. Most administrators are relieved when an employee chooses to resign than be fired from an agency. Most administrators and employees will chose the easy way out and not reveal the reasons why an ex-employee left his / her agency. The key to most questions asked of an ex-employer is the ex-employee eligible for re-hire.

Improper direction (supervision and policy) is when the chief or sheriff fails to properly direct policy and procedure for his / her subordinates to follow that protect the individual rights of citizens who come in contact with police intervention. Inadequate discipline is the failure by supervision to note the occurrence of improper acts of an officer. The actions or deeds of an officer and the failure to take appropriate proscribed actions based on historical behaviors of the individual officer may be construed as inadequate discipline. The severity of the corrective measures does not determine inadequate discipline as long as the discipline is consistent with policy and the guidelines proscribed in a scale that takes into account the violation and punishment.

Failure to protect is a catchall category that attorneys will place a multitude of alleged evil doings or failures of law enforcement based on the protection and code to Serve and Protect. However, all of 42 U.S.C. (1983) addresses an officer's failure to protect and the duties addressed herein.

The aforementioned areas are the most critical ones for suit. These are broad and overlapping in every category. The remedy is the same as the problem. One must continuously monitor change and follow the trends of court decisions along with new problems as they arrive. There are no areas that problems are constant and set in stone; problems grow from the actions of supervisors, employees, the public, and legislatures. We are constantly in change by the actions of others who we have no control over to influence the outcome of the unknown. This means that others make the law, others break the law, we enforce the law, and the court decides after the fact if it was done in accordance with constitutional law, statute, policy and procedure.

Immunity from Suit is when one believes that there is a magic potion to spread over a city, county or state agency that will absolve them of suit this individual is setting themselves up for real liability. Building the basis of a defense of immunity starts with the very base of operations of a police agency. Immunity is not easy and demands each officer, supervisor and commander to monitor the activities of the officers they supervise. These supervisors must be of the highest quality with the best affordable training that comprehends the issues they may be confronted with during routine as well as stress situations. Realistically, when an agency has this type of supervision these people are hired away to higher paying agencies with greater benefits. This leaves smaller agencies grasping for competent supervisors and field officers. The paradox is

small agencies train those that are above the norm and those officers leave not because they dislike the agency but for their family and career advancement. This migration is a continuum of draining off the cream of an agency and leaving the complacent and "satisfied" with status quo to face critical issues with less than all the necessary tools to ward off civil liability. The administrator may be well versed in those issues; and has repeatedly gone over those issues with new personnel who now have become lax because of the turnover rate that exceeds his work force replacement expectations thus creating liability issues. This is the reality of small agencies throughout Texas and in the Texas Panhandle where one large federal agency hires fifty officers at a time and feed on all agencies large and small for their trained workforce.

There is no absolute immunity from suit but for the competent administrator there is built in qualified immunity. Through proper training and proper attention to details within each department lies a comfort zone of qualified immunity. This immunity is not easily gained. As an administrator, one must pay close attention to detail and how business is conducted. Every level of his/her organizational structure must be monitored to insure that liability issues are minimized. By not being in touch with ongoing departmental business, an administrator assumes that the day-to-day activities are not flawed when in fact they are. When we bury our head in the sand, we lose sight of the perils around us assuming all is well.

We can build an immunity case as we work, train, and observe our departments. When we are knowledgeable of what our department is doing, the more capable

administrators are able to protect themselves, the department, the governmental agency and the officer from successful suit.

## METHODOLGY

The research question to be examined considers whether or not administrators have sufficient training in vicarious liability issues to protect themselves and their governmental divisions. The researcher hypothesizes that most administrators have had some training in what liability is and what the most vulnerable areas are (excessive use of force and false arrest) but are not fully aware of the scope of what course suit may take.

The method of inquiry will include: a review of articles written and published about vicarious liability, personal experience involving suit, interviews, publications of literature on immunity and liability issues: and surveys of administrators of their experience, exposure, and knowledge about liability issues.

The instrument that will be used to measure the researcher's (<your) findings regarding vicarious liability and immunity from suit will include personal experience, knowledge of the subject, survey given to two LEMIT Modules, sheriffs, chiefs of police and other law enforcement personnel. The size of the survey will consist of 25 questions, distributed to 193 men and women survey participants from cross section of law enforcement administrators in Texas. The response rate to the survey instrument resulted in a 95% return of those in modules and meetings and less than one percent in internet survey. The information obtained from the survey will be analyzed by Jimmy W. Adams Chief of Police Borger, Texas.

## FINDINGS

This research addresses what others have said in reference to liability and immunity Issues. This document condenses these areas into a workable document that is concise and informative. The writer has experienced first hand two lawsuits involving him named as a defendant in his official capacity. This was personally uncomfortable and career reputation damaging. One was a suit that was a fourth and fourteenth amendment issue. One finds out early on in suit that an officers' word not backed up by documentation is taken only on face value. When an administrator is placing himself in the active role of an officer, his characteristics and immunity issue changes. As a policy maker, any action taken by the Sheriff or the Chief is seen by the Court as affecting change during the course of an event. When a constitutional issue is raised only written, audio and video documentation is accepted as evidence not the unrecorded, contested statements by plaintiff is considered in trial. Decision was for criminal defendant in civil suit.

Policy making while participating is most difficult for small county and municipal administrators when they are the only officers working investigations and answering calls. There are no subordinates to handoff the investigation to. These men and women are serving dual roles as officer/ policy maker. The courts do not recognize the situation that these officers have to serve and no quarter is given when suit occurs for these men and women.

The results of the survey show that most administrators are aware of liability issues. Many are trained in civil liability issues, the training increases as the size of the department increases. Training increases for officers with individual age, tenure and

exposure to suits. Eight-four percent of survey respondents have had liability training in written policy and procedures. Ninety-percent of survey respondents had liability training on continuing education training. Thirty-three percent had training in issues of reassignment where an officer is not suited for the duty assigned. Twenty-four percent of the respondents had no training on liability issues. These percentages are encouraging at best. The figure that has concern is approximately one fourth of the respondents had not had any liability training. Officers would be targeted by attorneys in suit for deliberate indifference exposure. The median age of respondents were 46 years of age and the median tenure of respondents was 15 years. However, 80 of the 193 respondents had 20 plus years. These figures are based on six surveys of chiefs, sheriffs, classes at the Law Enforcement Management Institute of Texas (LEMIT) and one area panhandle peace officers meeting with 100% participation from fifty attendees. Administrators are not controlled by threat of litigation in the performance of their duties. The feeling for the most part is there are so many potential suits, line up and take you best shot. There are too many lawyers looking for work and public safety has traditionally been the meal ticket for this type of attorney. It is likened to fishing with dynamite; blow up the pond and something will come to the top. This may not be the best attitude based on documented success of suits against police and police actions. When the odds are in the favor of the police in the successful defense of suit but the cost of defending such litigation could be better spent on education, training and retention of good personnel. There are situations that no amount of training and education can cover, but with prior commitment and focus on basic liability issues mitigation of cost may be possible. As an administrator, one cannot stop suit but one

can successfully defend against victory through preparation. Document, document, document, is the key for proof of the preparation. Punitive damages that focus on areas where no amount of preparation has been made will the reward the plaintiff in suit against an officer, officials and their agency. The courts are not kind to those who willfully disregard basic rights and push the envelope of intentional disregard of constitutional law. The survey of individual officers and administrators through out Texas acknowledge that liability is a factor in their activities but does not deter them from their responsibilities to their citizens. Not one officer would change occupations just on the fear of suit; this is good. Law enforcement is worth the individual and collective risk when properly trained to stay the course of the occupation. Education of the individual is not a factor in awareness of liability for officers but being educated in liability issues is a factor. The core of liability issues is the willingness of those men and women who can affect change do so and in the direction that will minimize damage and/or negate successful suit. The writer of this research has enjoyed the challenge and dialogue with fellow administrators. This author acknowledges their remarks and assistance in providing insight into how they have addressed issues of liability. We will stay the course and make Texas safe while insuring that we follow the law and protect individual rights.

## DISCUSSION/CONCLUSIONS

The problem or issue examined by the researcher considered whether or not law enforcement officials have had sufficient training in liability issues. One note of interests is Texas Sheriffs have been exposed to more concurrent liability training than Police Chiefs mostly due to jail issues and the broad spectrum of suit cases from jail issues.

The purpose of this research was to make aware to governmental administrators the deep pit of civil liability they are stepping into when assuming the role of Chief of Police or Sheriff. It is hopeful that these men and women use this to read about and expand their knowledge of vicarious liability and how immunity from suit can be improved with knowledge and attention to details within their agencies.

The research question that was examined focused on what do you know, what have you done about liability issues and how best to update the knowledge base that they possess about liability issues. The researcher hypothesized that law enforcement administrators were not fully trained on liability issues affording them to immunity in suit.

The researcher concluded from the findings that more in-depth training for all administrators is needed before immunity could be expected. The findings of the research supported the hypothesis. The reason why the findings supported the hypothesis is due to the broad scope of the topic of liability and immunity issues. The legal profession has volumes on liability issues and immunity with no clear answer to cover all topics of liability and immunity. Limitations that might have hindered this study resulted because the length of the document and the limited knowledge of the writer of this article.

The study of vicarious liability and immunity from suit is relevant to contemporary law enforcement because this issue will rear its ugly head sometime during an administrators career and temporarily interfere with the everyday life of a career officer. Law enforcement officials (Chiefs of Police and Sheriffs) stand to be benefited by the results of this research by illustrating to them that their knowledge is not sufficient for a proper building of defenses in civil issues that can and will lead to suit. It is their duty to

make themselves as knowledgeable as possible with the resources available to build a defense by practice, custom and policy. It is imperative to live by the rules we play by to adequately gain immunity in suit.

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