

**The Bill Blackwood  
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**Failure to Train: Opening the Door to Civil Liability for  
Law Enforcement**

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**An Administrative Research Paper  
Submitted in Partial Fulfillment  
Required for Graduation from the  
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## **ABSTRACT**

Police liability is of increasing concern to members of the public, police administrators, and to individual police officers. Current literature suggests that the management of police liability increases police professionalism and contributes to police accountability. The total number of federal civil cases filed against police officers under Section 1983 nearly tripled from 1978 to 1996 (Archbold, 2004). The researcher conducted a review of established case law relating to the “failure to train” an officer properly. When considering whether or not the failure to train an officer opens the door to civil liability, the researcher is specifically referring to the adequate field training of new hires and risk management training for supervisors and police administrators.

The International Association of Chiefs of Police (IACP) suggests that police departments should employ a full-time “legal advisor” to consult with officers and assist them with decision making to reduce civil liability (1998). The author believes that adequate risk management training for police supervisors and police administrators would be sufficient to meet this recommendation.

Effective, well-established and well-documented field training officer programs are essential components of risk management in law enforcement. The researcher collected data that showed that risk management training for administrators and police supervisors, along with effective field training programs for officers, significantly reduces civil liability for law enforcement agencies.

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## INTRODUCTION

In modern day law enforcement, it is rare to find an officer with ten or more years of experience who hasn't been involved in some type of civil litigation relating to his or her job. Today, officers are forced to pay monthly or yearly dues to associations designed to protect them from frivolous allegations and civil lawsuits. Officers are required to constantly be cognizant of the consequences of perceived negligence on their part. Police administrators and those charged with supervising police officers have the awesome responsibility of insuring that officers are properly and adequately trained. Proper and adequate training can and will avoid costly civil litigation brought by complainants. The issued to be examined is police civil liabilities and ways to thwart those liabilities.

The purpose of this research is to examine and analyze ways to thwart civil liabilities through proper and adequate training. The researcher will ask the question, Failure to train: Are we opening the door to civil liabilities? An examination will be made of court cases that involve civil liabilities brought against police officers, police agencies, county and municipal entities. The researcher will examine and analyze court cases in where agencies and it's officers have been found negligent due to the failure of administrators and supervisors to train their officers. The researcher will further examine and analyze what specifically we as law enforcement administrators and supervisors can do to avoid liabilities through training.

The methods of inquiry will include a review of written materials, data obtained from books, periodicals, journals and internet sources. Also utilized will be a survey of a variety of municipal, county and university police departments in the State of Texas.

The researcher will ascertain what police agencies are doing in the way of training to minimize the risk of police civil liabilities.

The researcher anticipates that the findings will present that effective and viable training of police administrators and supervisors in the area of risk management will significantly reduce civil liabilities associated with police action(s) or police inaction(s). Furthermore, the researcher anticipates that most large police agencies have training programs in place to reduce civil liabilities, and smaller agencies are following that lead. The researcher believes that he will find many significant examples of failure to train lawsuits that have been brought against police agencies. The researcher also anticipates that effective training in the area of risk management, starting with an officer's field training program, will answer the researcher's question.

Law enforcement as a whole will be impacted and will benefit significantly from this research. Police agencies of the county, municipal and state level are always looking for ways to reduce the monetary consequences of police civil liabilities. Police administrators and supervisors will be able to utilize this research to make the decision to implement training programs starting at the field training level on up.

## **REVIEW OF LITERATURE**

Regarding the failure to train, one must consider whether or not the door to civil liability is being opened. To answer this question, "civil liability" must be defined. According to the Merriam-Webster's Dictionary of Law, the term "civil liability is defined as; liability imposed under civil laws and civil process as distinguished from criminal laws; also: the state of being subject to civil sanctions (as restitution or damages) civil liability is created by a legal theory or principle that places a duty or obligation (as to use

due care) on the defendant. That said, the issue of “Failure to Train” must be clearly stated. The statement “Failure to Train” is defined by, <http://faculty.ncwc.edu/> as, inadequately preparing employees to perform their duties; minimal or too easy academy training; little or no in-service training; no educational tuition reimbursement. Police liability is of increasing concern to members of the public, police administrators, and individual police officers. Current literature suggests that the management of police liability increases police professionalism, and also contributes to police accountability (Archbold, 2004).

A recent report released by the U.S. Department of Justice outlines several ways that police agencies can make organizational changes to promote police integrity, improve police practices and policies, and decrease exposure to liability incidents that often result in litigation (Archbold, 2004). The total number of federal civil cases filed against police officers under Section 1983 nearly tripled from 1978 to 1996 (Archbold, 2004). Lawsuits that are filed against police officers under Section 1983 pertain to any police action that would be deemed outside the guidelines of an officer’s official authority, which results in a violation of civil rights as defined by the United States Constitution (Archbold, 2004).

According to [www.findlaw.com](http://www.findlaw.com), Section 1983 is defined as a civil action for deprivation of rights. The definition further states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State 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 thereof 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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

One high profile case in recent years is the Rodney King case. The incident raised a public outcry among people who believed it was racially motivated. In an environment of growing tension between the black community and the Los Angeles, California Police Department (LAPD) as well as increasing anger over alleged police brutality and more general issues of unemployment, racial tension, and poverty facing the black community in South Central Los Angeles, the acquittal in a state court of the four officers charged with using excessive force in subduing King provided the spark that led to the 1992 Los Angeles Riots (<http://en.wikipedia.org>). Rodney King was awarded an unprecedented 3.8 million dollars in a subsequent civil case against the Los Angeles Police Department. Large scale high profile cases such as the aforementioned case have contributed to an increase in civil litigation against police departments. Due to the ripple effect this landmark case caused throughout the nation's law enforcement community, law enforcement agencies found themselves defending their officer's actions for many years following the judgment.

The researcher conducted a review of established case law relating to “failure to train.” Specifically, the author reviewed two cases, *Kibbe V. City of Springfield* 777 F. 2d 801 (1<sup>st</sup> Cir. 1985) and *Zuche V. City and County of Denver* 997 F. 2d 730 (10<sup>th</sup> Cir. 1993). According to the National Rifle Association, (author unknown) in the case of *Kibbe V. City of Springfield*, a suspect was shot and killed following an automobile chase. The court of appeals ruled that the police department's gross negligence in training that caused improper use of deadly force by the officer and ruled that the municipality could be held liable. In the case of *Zuche V. City and County of Denver*, the 10<sup>th</sup> Circuit held the agency liable due to sufficient evidence to show that the unreasonable shooting of a drunken suspect was the result of an inadequate training program. The number of civil lawsuits filed against police departments increased by 124 percent from 1967 to 1971 (Kappeler, 1993). Judgments in federal courts against police departments averaged 134,690 from 1982 through 1991, with awards from 1 million dollars to approximately 1.6 million dollars (Kappeler, 1993).

When the author asks the question, Failure to train: Opening the door to civil liability, the researcher is specifically referring to adequate field training of new hires and risk management training for supervisors and police administrators. First, the nature of police work is inherently dangerous and regularly, officers are exposed to critical situations that may become liability incidents (Archbold, 2004.) There is also research that suggests that police officer's fear of being sued also deters some police officers from participating in activities that could result in civil litigation (Archbold, 2004; 18).

The researcher believes that effective risk management training and an adequate field training program will increase an officer's confidence level and assist him or her in



dealing with these incidents. Many Texas peace officers protect themselves with legal insurance through associations such as Texas Municipal Police Association (TMPA) or Combined Law Enforcement Association of Texas (CLEAT). According to <http://www.tmpa.org>, one of the services provided is legal representation up to one million dollars for members/officers involved in civil litigation that arises from police incidents. Many officers feel the necessity to join such associations due to officers viewing being sued by citizens as “inevitable and unavoidable” due to the nature of their work (Archbold, 2004).

The International Association of Chiefs of Police (IACP) suggests that police departments should employ a full-time “legal advisor” to consult with officers and assist them with decision making to reduce civil liability. The IACP further suggests that Risk Managers or part-time legal advisors could be utilized as another practical substitute for hiring full-time legal advisors (Archbold, 2004). The author believes that adequate Risk Management training for police supervisors and police administrators would be sufficient to meet this recommendation.

The author conducted a phone interview with William Bender, a risk management director for a medium sized Texas city and an individual considered by the researcher as an expert in the field of risk management. Bender was asked by the researcher if in his opinion, police agencies were doing enough risk management training. Bender replied by explaining that there can never be enough risk management training conducted by police agencies. Bender agreed with the author’s hypothesis that risk management training is an effective tool to combat civil liabilities in the law enforcement profession. Bender further advised that an effective, well-established and well-

documented field training officer program was an essential component of risk management in law enforcement (W. Bender, personal communication, February 7, 2007).

## **METHODOLOGY**

The researcher will attempt to answer the question, Failure to train: Opening the door to civil liability? Are police agencies doing enough risk management training to reduce the monetary consequences of police civil liability? Are inadequate field training officer programs contributing to police civil liability? Are effective field training officer programs proving to be an effective tool to reduce the liabilities police officers face in modern day law enforcement?

The researcher anticipates that effective risk management training for police supervisors and police administrators will greatly reduce police civil liabilities. The author further anticipates that complete and effective field training will also contribute to minimizing the risk of police civil liabilities.

The author conducted a review of numerous internet web sites, police publications, journals, articles and books related to the topic. The researcher surveyed a total of twenty police agencies. The police agencies varied from municipalities, county sheriff's offices, university police departments, to other more unique police departments to include, one transit police department and one hospital district police organization. The response rate was one hundred percent.

Upon receiving the survey instrument from the research participants, the researcher analyzed the data using a comparison method. The survey results indicated that the population counts of the agencies surveyed was diverse and represented several

different sizes of community service populations. The survey included service areas of less than ten-thousand in population to populations of over sixty-thousand. Additionally, the agencies surveyed had sworn personnel counts from less than twenty to more than eighty.

## **FINDINGS**

The researcher surveyed a total of twenty police organizations. Nineteen of the twenty police agencies reported that their agency had field training programs in place to train new hires. The field training programs ranged from seven weeks to twenty-six weeks. Only one agency out of the twenty surveyed did not have an active field training program in place. Of the nineteen agencies with field training programs the average length of the training was thirteen weeks. Thirteen of the agencies surveyed reported that they had experienced at least one civil lawsuit within the last five years. Of those thirteen agencies surveyed, six agencies reported that they had field training programs that were less than the thirteen week average. One of those thirteen agencies reported that they had been defendants in more than five lawsuits within the last five years. This data suggests to the author that agencies that have a lengthier field training programs were less likely to be involved in some type of civil litigation as a defendant. The author obviously understands that the quality and the substance of the training are important factors that should be considered as well. It would appear that this data should indicate to law enforcement agencies that in spite of recruitment downfalls and the demands to put more officers on the streets, that probationary police officers should not be rushed or expedited through field training programs.

Out of the twenty agencies surveyed, seven agencies reported that their agency had not been involved in any civil litigation as a defendant within the last five years. Of those seven agencies that have not been sued within the last five years, six reported that their agency required some form of risk management training for police personnel. This data indicates that required risk management training has proven to be an effective tool to reduce police civil liabilities.

The survey instrument further showed that sixty percent of all the sworn personnel represented in the survey found it necessary to partake in membership associations such as TMPA, CLEAT, or other like associations that provide legal insurance to police officers. This data suggests that police officers view police civil liability as a significant concern for them. The case law reviewed that had a direct correlation with failure to train issues showed several examples of lawsuits brought against police departments for a variety of failure to train allegations. Failure to train litigation brought against police departments reviewed by the author were not just limited to more commonly associated topics such as, deadly force, excessive use of force or police pursuits but showed several examples of “gross negligence in training” or “inadequate training programs.”

## **CONCLUSION**

The problem examined by the researcher in this study was two-fold with a common objective. Police agencies failure to utilize risk management training for its personnel, supervisors, and administrators. Inadequate or ineffective field training officer programs in place that do not meet the demands of judicially established liability standards. The purpose of this research was to illustrate and prove that risk management training for police supervisors and administrators coupled with complete and effective field training

for new hires will reduce police civil liabilities. The research questions that were examined were also two-fold and focused on two problems. Are police agencies doing enough to reduce the monetary consequences of civil liabilities? Are adequate and effective field training officer programs proving to be an effective tool in reducing civil liabilities? The author hypothesized that the utilization of risk management training for police personnel, supervisors, and administrators will reduce civil liability along with adequate and effective field training of new hires. The researcher concluded from the findings that agencies that have current risk management training requirements for essential personnel have experienced less civil lawsuits than agencies that do not currently provide risk management training. The data also supported the author's hypothesis that inadequate field training officer programs greatly contribute and expose police agencies to avoidable civil litigation. Some may argue that there are other important factors that contribute to this finding. That may very well be true however, in today's money driven litigious society, we as law enforcement professionals must examine and analyze every possible avenue of protection as a matter of duty and obligation to the tax payers in our communities.

The study included a variety of police entities. The study may have been somewhat hindered by the study participants lack of knowledge of lawsuits within their own department due to the position they hold. Being that dealing with civil litigation is primarily handled at the administrative level in most departments, it is possible that some of the study participants, mainly field level supervisors, do not know exactly how many times their agency has been sued unless they were directly involved or a target of the litigation. The study of reducing civil liability in law enforcement is a relevant issue

to contemporary law enforcement for one simple reason, money. Police supervisors and administrators represent the department in which they serve. It is the duty and obligation of law enforcement professionals to seek out methods to thwart and examine different ways to reduce civil liabilities for their departments. It is the researcher's hope that law enforcement executives will take heed to the two points made by the author in this study and immediately implement risk management training for essential personnel and re-evaluate the effectiveness of their current field training programs for new hires. The researcher intended for this study to benefit upper level management within police agencies who regulate training requirements for police personnel within their agency. However, the primary beneficiary of this research will be tax paying citizens within our communities who ultimately suffer the monetary consequences of our actions.

The author interviewed, William Bender, a risk manager for a medium size city in the greater Houston area, and considered by the author to be an expert in the field of risk management. The author believes that the research can be summarized by quoting a one statement made by William Bender in the interview. When asked if he thought that police agencies were doing enough to minimize the risk of civil liabilities he stated, "No, as a risk manager, you can never do enough risk management training for your personnel" (W. Bender, personal communication, February 7, 2007). The time has come for police agencies to arm themselves with highly trained line personnel and police supervisors or administrators who are risk managers as well as shift managers.

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