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REDUCING CIVIL LIABILITY FOR LAW ENFORCEMENT AGENCIES

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by
John W. Moseley

Corpus Christi Police Department
Corpus Christi, Texas
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ABSTRACT

This research project addresses the issue of civil liability and what the law enforcement agency administrator can do to reduce civil liability for their agency. The history of civil liability is reviewed with emphasis on dramatically increased litigation in recent years. Review of available literature and practice concentrates on methods the administrator can employ to reduce civil liability within the agency. Foremost among the methods proposed is employee education about civil liability. Employees must be aware of what conduct invites civil liability and the best ways to handle potentially liable situations. Other tools include identifying employees at risk of incurring liability and ensuring the conduct of those employees is corrected and monitored. Issues such as responsible supervision, fair and consistent discipline, and personnel concerns programs are discussed. Emphasis is also placed on having current and thorough policies and procedures in force which strengthen the agency's position when faced with litigation. Recommendations are made for the agency administrator to utilize a legal advisor and survey other departmental policies and procedures.

Introduction

The purpose of this research is to provide the law enforcement administrator with guidelines and general recommendations for reducing civil liability for their agency. Many administrators have been negligent in identifying and managing employees prone to misconduct. This negligence has often proved costly for the agency (MacManus, 1994). Today's law enforcement executive must not only identify and manage at-risk employees, they must also ensure that all employees are provided with proper training and guidelines to avoid civil liability.

The agency executive must be diligent in their efforts to identify the employee who has accrued a 'resume' of citizen/departmental complaints even though most, or all of the allegations may have been adjudged unfounded or not sustained. Additionally, the manager must be equally diligent in providing the appropriate solution once the at-risk employee has been identified. The appropriate solution could range from training to formal discipline to reassignment within the organization. Ultimately, the law enforcement administrator who assures that all reasonable efforts are made to identify and manage those employees exhibiting patterns of misconduct will save their agency time, money, manpower and embarrassment.

In today's litigious society, failure to train and manage

employees in areas of civil liability can lead to disastrous consequences. This research should outline for law enforcement agencies what must be done within the agency to reduce civil liability.

Historical, legal, and Theoretical Context

The varied duties and expectations placed upon the contemporary law enforcement officer make for a difficult and challenging occupation. Prior to the 1960's, civil suits filed against law enforcement agencies were relatively few in number and caused minimal concern for the agency head (Territo, 1984; p. 3).

In 1974 The International Association of Chiefs of Police confirmed what had only been a suspicion until then -- the number of civil suits alleging police misconduct litigation was taking a dramatic upsurge (Territo, 1984; p. 3).

In fact, the number of civil suits filed against police increased 124 percent from 1967 to 1971 (Kappeler, 1993; p. 3). Some sources estimate that by 1987 there was as much as \$780 billion in pending liability litigation against local governments (Kappeler, 1993; p. 7). Judgements in Federal District Courts against police departments averaged \$134,690 from 1982 through 1991 with individual awards ranging from \$1 to over \$1.6 million (Kappeler, 1993; 7). Recent high profile cases such as the Rodney King incident in Los Angeles have contributed to the increase in police misconduct litigation.

We have always gotten a steady stream of police misconduct and brutality complaints, said John Crew, director of the Police Practices Project of the American Civil Liberties Union of Northern California. Since the Rodney King incident, that stream has become a flood (Shoop, 1991; p. 11).

Review of Literature and Practice

The agency administrator must first recognize who the potential at risk employees are prior to attempting corrective measures.

Recent studies of police departments in Boston and in Los Angeles have uncovered a disturbing situation which may be occurring in many of America's police agencies: the existence of a small group of problem officers who account for a vastly disproportionate share of police misconduct allegations (PDDB, 1993; p. 1).

"In order to identify these officers, departments must keep accurate records which track all allegations filed against each officer in the department" (PDDB, 1993; p. 3). There are several different methods of record keeping for police misconduct allegations. Yet, whatever the method, it must provide the statistical and evaluative information that identifies which officers have developed or are developing a pattern of misconduct.

Records of citizen complaints against officers should be in a format that allows you to see any areas of difficulty in your department, or any worrisome patterns of misconduct that might be forming. Cross-reference these files according to the type of misconduct and the neighborhood in which it allegedly took place instead of just organizing by the name of the officer or the citizen complaining (PDDB, 1993; p3).

This information must be readily retrievable and evaluated on a consistent basis. There are commercially marketed computerized internal affairs management systems available which track misconduct complaints and offer an early warning system which identifies at risk officers. These systems can cost anywhere from just a few thousand dollars to near six figure amounts (J.C. Wilt, personal communication, February, 1997).

Once the agency administrator has established a system by which she can effectively and consistently identify those officers prone to misconduct complaints she must take whatever action is necessary to ensure that everything possible is done to correct the conduct causing the complaints. There are many things that the law enforcement executive can do to ensure she has done her best in reducing civil liability for the agency.

Education must be the first step in fighting civil liability in law enforcement. Education and training must begin in the academy and continue throughout the officer's career.

There is no better way for officers, a department or police executives to insulate themselves from the threat of civil liability than to have a good understanding of the framework of liability law (Kappeler, 1993; p. 17).

This thought is amplified in the case of the high risk officer. If every officer does not understand the implications of his actions, or inactions, then the officer and the agency are doomed to those mistakes which in today's world often lead to civil

liability and its' associated penalties. In fact, the Supreme Court has held that "a failure to train constitutes a municipal policy for purposes of Monell (Monell v. New York City Department of Social Services, 1978) liability if the failure reflects a deliberate indifference to the constitutional rights of its inhabitants" (O'Linn, 1992).

Related to education and training, the law enforcement executive must also strive to ensure that supervisors are properly trained and are aware of their responsibilities in identifying and managing misconduct on the part of their subordinates. Supervisors must be conscious of the repercussions of liability under current law which reveals seven general areas in which supervisory negligence may arise (del Carmen, 1991). "The primary responsibility for enforcing departmental policies rest with first-line supervisors" (IACP, 1977; p. 47). Among the seven supervisory liabilities mentioned by Dr. del Carmen, three can be directly attributable to first-line supervisors. Failure to supervise, failure to direct and failure to investigate or discipline are functions that many times fall directly upon the shoulders of the first-line supervisor.

A morale-damaging supervisory practice is one in which a supervisor supports his people regardless of the situation. While good leadership demands loyalty, a leader cannot support them all the time. A supervisor who endorses officers' actions when they are clearly wrong leaves the agency open to civil and criminal liability, encourages disregard of procedure, and makes officers who are conscientious about following proper

procedure look inferior by comparison (PDDB, 1994; p. 6).

First-line supervisors must be held to a high degree of professionalism and they must hold their subordinates to the same high degree of professionalism.

Another vehicle, closely aligned with education and training is a departmental personnel concerns program. Variations of these programs attempt to intervene in errant conduct of identified officers before serious misconduct occurs. Almost always, these programs are positive discipline oriented and totally separate from the department's formal disciplinary process. The Houston, Texas police department administers a personnel concerns program that uses several different methods of identifying potential participants. Once identified, the officer is mandated to participate in the program along with several of his supervisors. Training and close monitoring follow for a specified period of time (usually one year). The officer is then released from the program or additional corrective action is taken if the officer has failed to achieve the goals of the program (Williams, 1992).

The discipline philosophy of the agency administrator and how effectively he implements and manages that philosophy ultimately has direct influence on how well the agency avoids or defends against civil litigation.

The most effective disciplinary system combines the reinforcement of the right set of values in all

employees with behavioral standards that are consistently and fairly applied. Each employee must understand and be guided by these standards that have been established in the department's (and city's) general orders, rules, regulations, and procedures (Stephens, 1994; p. 20).

Courts and juries take note and most often give credit when a law enforcement agency is able to demonstrate that it consistently and thoroughly investigates misconduct allegations and takes appropriate disciplinary action when allegations are sustained. In addition to cultivating a firm but fair disciplinary process the agency executive should foster an open relationship with the community to establish trust between community and department.

Another important way to demonstrate the integrity of a complaint mechanism is to encourage citizens to complain when they feel they have been wronged. How easy is it for a citizen to complain about a police officer? If a citizen feels he has been abused by a police officer, it takes a lot of nerve for him to go into that officer's station (or any other police facility) to complain. What can he expect when he goes in and tells a desk officer that he wants to initiate an investigation directed at showing that one of the officer's colleagues acted wrongly (Fyfe, 1985; p. 93)?

Even though "agencies more sensitive to the quality of citizen interaction often have statistically higher complaint rates" (TELEMASP, 1994), an agency should strive to open its complaint system to the citizens of the community. When the citizenry truly feels that it can come to the police department, file a complaint against an officer and receive fair and just treatment, that is when the agency establishes one of the best lines of defense in

avoiding civil litigation.

Another important issue directly related to the prevention of and the preparedness for civil liability are the rules, regulations, policies and procedures that an agency operates within. It is important to remember that an official policy of a department is not necessarily just the written rules and policies of a department, it can be something as intangible as a widespread practice or an accepted custom that the department or municipality has allowed over time (Alpert and Smith, 1996; pp. 111-113).

The law enforcement manager must be acutely aware of these unwritten but official policies and ensure that they are in the best interest of the department and do not expose it to liability. For those policies and procedures that are written into official departmental documents, each must be continuously reviewed and updated to conform with contemporary trends in case law, trends in civil litigation, and statute.

Understanding that discretion is an important and necessary part of law enforcement, policies and procedures should be written in a fashion that allows for maximum use of discretion and at the same time maximum control. For instance, high risk situations such as use of deadly force, vehicle pursuits, and handling of domestic violence (Cordner and Kenney, 1996) may

require more specific guidance in policy than would a policy on how to answer the telephone in the workplace (Alpert and Smith, 1996; pp. 111-126). However, each and every police manager must remember that "there is no way a policy can be effective without training and discipline" (Lynch, 1986; p. 165).

The law enforcement executive should strive to broaden his knowledge of what others are doing to reduce civil liability. The department should communicate with other departments about their efforts in the litigation field. The department head should utilize all available resources such as legal advisors and risk managers.

If municipalities are to promote a less confrontational atmosphere and avoid liability, risk managers must be involved in a number of areas, keeping the police chief and officers informed on trends relating to police liability and recent court decisions and reviewing police policies and procedures on issues such as hot pursuit and use of excessive force (Pouzar, 1992; p. 25)

Discussion of Relevant Issues

There are several approaches to reduce civil liability in the law enforcement field. Some are reactive such as identifying at risk employees and ensuring that the undesirable conduct is corrected. Others could be considered proactive, particularly employee training and establishing proven policies and procedures.

The obvious constraints involved in the reduction of civil liability are the costs involved in training personnel and in

establishing contemporary complaint tracking systems. The agency head may also incur opposition from any employee organizations who might perceive closer scrutiny of personnel misconduct as objectionable. However, when considering the potential costs of civil liability, these constraints may seem a small price to pay. An added bonus to the agency administrator who strives to insulate her agency from civil liability is the resultant professionalism displayed by the trained employees. This professionalism, when recognized by the community translates to a community ready and willing to support their police agency.

Conclusion

When an agency effectively manages a high rate problem officer (PDDB, 1993; p. 3) and thoroughly trains all personnel in the aspects of civil liability the agency benefits in numerous ways:

- ▶ The agency sends a message to other officers that misconduct is not acceptable behavior
- ▶ Reduction in lawsuits and personnel complaints
- ▶ An Increase in a citizen's faith in the Internal Investigation process
- ▶ Reclamation of officer
- ▶ Increased supervisory involvement in discipline and training
- ▶ The perpetuation of a positive departmental image (PDDB, 1993; p. 3)

The police manager's ability to manage liability is the direct result of his knowledge of the accepted standards and the initiation of liability protection programs in the police department (Lynch, 1986; p.169).

Liability protection programs are those described throughout this paper such as education, supervision, personnel concern programs, discipline and policies. Perhaps second only to education of employees, the most important step for a law enforcement executive is to utilize a proven and dependable legal advisor. If the law enforcement manager enforces such programs and safeguards, he will without doubt lessen his susceptibility to civil liability in today's litigious society.

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