

**THE BILL BLACKWOOD
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS**

**Developing a Progressive Firearms Training
Program for the Dumas Police Department**

**A Policy Research Project
Submitted in Partial Fulfillment
of the Requirements for the Professional Designation
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331

TABLE OF CONTENTS

Section	Page
Abstract	
Introduction	1
Historical and Legal Context	1
Review of Literature or Practice	7
Discussion of Relevant Issues	10
Conclusion	12
Bibliography	14

ABSTRACT

The best insurance policy city can buy is a quality firearms program that is current with today's state of the art training techniques. A quality training program will not keep you out of court, but will significantly reduce the possibility of a liability judgment.

The information in this research project was obtained from case law, publications, and books related to firearms training, primarily in the area of liability reduction. The goal of this research is to inform our city fathers that there is a need to increase our budget in firearms related training. It is important to understand that the greatest single possible liability to a city in terms of civil suits, is its police department, and the greatest single liability to a police department is its use of firearms. Proper training and documentation of that training will protect the city, the department, and the police officer. Compared to other types of claims, lawsuits filed against cities for misuse of firearms carry with them the highest award, between one dollar and \$1.6 million dollars (Kappler and Kappeler, 1992).

INTRODUCTION

Since the Supreme Court's implementation of 42 U.S.C. Section 1983, law enforcement related liability in the use of firearms has increased at an alarming rate.

This proposal was done to assist the City Commissioners, Mayor, and the Chief of Police in reaching an informed decision on the improvement of firearms training for the Dumas Police Department (DPD). At present, the DPD is allocating approximately eight hours annually for firearms training per officer. The officers fire an average of three hundred rounds per officer per year for training and qualification. At present, there are no funds allocated for firearms training and qualification. Preventative measures can be taken to insure our economic, officer, and public safety. The goal of this research project is to increase the availability of budgeted funds for officers in the area of firearms related training. The department would like to increase the training and qualification time to a minimum of 16 hours per year for each officer. According to one legal scholar, "the police are currently faced with more than 30,000 civil actions annually" (Silver, 1991:8).

HISTORICAL AND LEGAL CONTEXT

In July of 1990 the number of hours the department spent on the range averaged four annually. The officers in the department received a total of approximately twenty to twenty-four hours annually in all types of courses, which had begun to meet the state mandated forty hours every two years. Prior to 1993, DPD

firearms qualification was once a year with a total of 50 rounds fired. In addition officers had to supply their duty ammunition. The department did not have a standardization of weapons, or caliber of weapon. Weapons allowed varied from a .38 special to a .44 magnum. Officers were also allowed to change weapons without having to qualify with them until the following year, which sometimes leads to weapon and ammunition failures on the range. The weapon and ammunition failures were due to the failure of the range master to inspect, and require the officer to have quality weapons and ammunition. This lead to officers being unfamiliar with weapons, and carrying ammunition that would not function in them. Ammunition was not replaced on a regular basis, therefore it sometimes caused the weapon to misfire. Officers were using reloaded ammunition for qualification and duty use.

In the past six years qualification and training has increased drastically compared to 1990, but it still can be improved. As a department we are surpassing minimum state requirements, but only by narrow margins.

In speaking with firearms instructors across the panhandle, This writer has found that DPD is not alone in its predicament. Many departments are finding it harder and harder to allocate funds and time for increased training.

In recent years legal actions against the individual police officer, his supervisor and the municipality have dramatically changed in character. Formerly, most of these cases were filed

as state tort actions. Now the majority of these actions allege violations of plaintiff's constitutional rights pursuant to 42 U.S.C. 1983. A study conducted by Americans for Effective Law Enforcement Inc., found that these and related lawsuits had increased by more than 600 percent from 2,170 in 1967 to 13,410 in 1978. (Los Angeles Times, March, 1985)

Historically, Section 1983 was modeled from the Civil Rights Act of 1866, referred to as the Ku Klux Klan Act of 1871, and was enacted pursuant to the Fourteenth Amendment. It went virtually ignored until 1961 when it was resurrected in Monroe v. Pape, 365 U.S. 167, 81 S. Ct. 473 (1961). Between 1978 and 1985 the United States Supreme Court's decisions in six cases had a significant impact on the interpretation of Section 1983. These are:

1. A municipality may also be named as a defendant in an action under Section 1983, charging a constitutional violation only where the individual law enforcement officers's conduct was the result of a custom, policy or practice of the municipality (Monell v. New York City Department of Social Services, U.S. 659, 98 S. Ct. 20186 (1978)).
2. That such units of local government had no "good faith" defense (Owen v. City of Independence, 445 U.S. 662, 100 S. Ct. 1938 (1980)).
3. That the phrase "and Laws" in the statute meant exactly that, all laws, not just Civil Rights laws (Main v. Thiboutot, 100 S. Ct. 2502 (1980)).

4. This defense created by the courts allows a legitimately injured plaintiff to seek compensation, but protects public officials from liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known." (Harlow v. Fitzgerald, 102 S. Ct. 2727(1982)).
5. Deadly force "may not be used to prevent the escape of an apparently unarmed felon unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officers or others." (Tennessee v. Garner, 105 S.C.R. 1694(1985)). This decision invalidated the laws in seventeen states which place restrictions on police use of deadly force to prevent the escape of a person suspected of a felony.
6. The Supreme Court ruled that an isolated act of police misconduct cannot ordinarily make a city subject to damage suits for violating an individual's civil rights. The trial court stated that the jury could "infer" from "single action, unusually excessive use of force that it was attributable to inadequate training or supervision amounting to 'deliberate indifference' or 'gross negligence' on the part of the officials in charge." (City of Oklahoma City v.

S.C. No. 83-1919(1985)). The Supreme Court in overruling the trial and circuit courts stated "we think this inference unwarranted; first, in its assumption that the act at issue arose from inadequate training and, second, in its further assumption concerning the state of mind of the municipal policy makers. But more importantly, the inference allows a Section 1983 plaintiff to establish municipal liability without submitting proof of a single action taken by the municipal policy maker." (City of Oklahoma City v. Tuttle, 53 L.W. 4639, S.C. No. 83-1919(1985))

One of the frequently recurring issues in recent Section 1983 suits growing out of the use of deadly force is the allegation that the officer's improper use of deadly force was the result of inadequate training and/or supervision. Further, the trend of these cases is to sanction suits against not only the police officer but also his supervisors and the municipality by whom he is employed.

There are several court decisions that have turned the training issues into a major area of controversy for municipalities. These court cases have mandated that meeting state mandated minimum requirements is no longer enough to keep the cities and officers from liability lawsuits. The main case reviewed by the United States Supreme Court regarding firearms training was (Popow v. City of Margate, 476 Fed. Supp.

1237(1979)). In this case the court decided that gross negligence could result in a constitutional violation and that the record created issues of fact as to the officers' and city's gross negligence or recklessness. The court held that even though the officers involved had received the minimum training required by state law, additional training was required under the circumstances. The court noted that basic police officers' firearms training was received at the state police academy when they first joined the force, and the only continuing training occurred approximately every six months. However, there were no instructions on shooting at a moving target, night shooting or shooting in residential areas. Furthermore, the officers viewed no film nor participated in any simulations designed to teach them how the state law, city regulations, or policies on shooting applied in practice (Popow v. City of Margate, 476 Fed. Supp. 1237(1979)).

One court case in particular, has set forth standard rules of training which should establish the "minimum standards" (Canton v. Harris, 109 S. Ct. 1197(1989)). These rules are outlined as follows:

1. The training was necessary as validated by task analysis.
2. The persons conducting the training were, in fact qualified to conduct such training.
3. That training did, in fact, take place and was properly conducted and documented.

4. That the training was state-of-the-art and up-to-date.
5. That adequate measures of mastery of the subject matter can be documented.
6. That those who did not satisfactorily learn in the training session have received additional training and now have adequate mastery of the subject matter.
7. That close supervision exists to monitor and continually evaluate the trainee's progress.

These guidelines not only focus on preparing the police officer in the training that they receive, but also require conditions to the training. Each officer must be able to successfully complete the training required of them. If an officer can not complete the training then that officer should not be put into a situation in which that training would be necessary to adequately and safely perform the task. (Canton v. Harris, 109 S. Ct. 1197(1989)). The argument was reaffirmed in another case in which an officer accidentally shot and killed a driver of a vehicle(Mathews v. City of Atlanta, 699 F. Supp. 1552(N.D. Ga. (1988))).

REVIEW OF LITERATURE OR PRACTICE

The Dumas Police Department has had several officer involved shootings over the past 10 years, but none of those situations involved the officer firing his weapon at a suspect. This could

and will happen to Dumas Police Department in the future. It is not a matter of if, it is a matter of when. This department has changed to quarterly training sessions with all department weapons, which includes night shooting and scenario shooting. In an article for Law and Order Magazine the author stated that: "The program attempts to recreate the emotional stress of police work so that officers will be conditioned to react correctly while on duty." (Edholm, 1979:32). This is what DPD is attempting to do while on a limited budget.

In all of the liability-related publications the common rule is: "Guidelines focus on preparing police officers to react effectively under various conditions, including darkness, surprise, multiple targets, noise, confusion, and crowds." (Kirkham, 1980:10). The training must be realistic as possible and relevant to the officer's job. Not all the time will be spent on the range shooting. A portion of the time will be spent in the classroom going over some of the following areas: the state use of force statutes, departmental policy (use of force), court decisions, training methods and officer safety (Edholm, 1979:32), Law and Order magazine discusses instinctive shooting and argues that this builds stress in shooters, which will better prepare that officer for a street confrontation. (Edholm, 1979:32).

DPD is partially on the way to better liability protection through its extensive policy regarding the use of deadly force, and training in other areas of police services, However, there is

a need to enhance our firearms training. It is vitally important that the city fathers understand that enhanced firearms training will help protect them and the city, as well as the police department and its officers from increased litigation.

In Guns and Ammo, Firearms for Law Enforcement, "Qualification controversies" the writer makes this valuable point, "Remember, qualification is an accuracy and skills test. Test those skills your people are likely to need 'out there.' If they're deficient, work with them. Make them better. Make sure they go home in one piece at the end of their shifts." (Grassi, 1996:87)

To get a basic understanding of the firearms training that is being conducted in the Texas Panhandle, a telephone survey was conducted of four area police department the approximate size of DPD. The following departments were surveyed with an average of 23 officers per department. Canyon Texas P.D., Borger Texas P.D., Pampa Texas P.D., and Hereford Texas P.D.. There were four basic questions asked of each of the firearms instructions.

1. How many rounds are provided for each officer, practice and duty?
2. How many times a year do you provide training and qualification?
3. Does the department supply ammunition to each officer monthly?
4. Does the department provide other training other than just qualification?

Borger, Hereford, Pampa police department each supply the

officers of the department a minimum of 600 rounds a year. Each department with the exception of Hereford P.D. provides duty ammunition for qualification and training. Each department provides the officers with at least 100 rounds of duty ammunition. Each of the departments surveyed qualify and train a minimum of three times a year, except Pampa P.D. which qualifies and trains only two times a year. Hereford, Borger, and Pampa police departments make 50 rounds a month available to each of officers for training on their own. Each of the four departments conducts training in conjunction with each qualification period. The training includes, but not limited to night qualification, speed and accuracy drills and defensive tactics with firearms. (Telephone survey, 1996)

DISCUSSION OF RELEVANT ISSUES

In the discussion of relevant issues it is important to understand there are many factors that come into play in this research. First and foremost is on the mind of the city commissioners, is how much money will it cost the city? Second, is this increased expenditure really necessary? Lastly, have we had any problems up to this point that would warrant changing our current practices?

In this section the types and frequency of training will be covered. This will allow the city commissioners and chief of police to obtain an understanding that not only is firearms qualification and training needed, but it is needed at least

every quarter (qualification semi-annually, training quarterly). The main goal is to obtain from the city commissioners a line item budget for the specific items related to firearms training and equipment. The answer to the first question is not a complicated one. The bottom line request for funds is \$8,500.00 in a line item budget. The question will be: where is this money going to go? The money will be used for several items. The largest expense is the ammunition. Because of health concerns and weapons warranties it is best to use new ammunition rather than take a chance on reloaded ammunition. (Speer ballistics workshop, 1996) It is also better to use "clean fire" ammunition to reduce the lead contamination to the shooter and range. Duty ammunition will be the most expensive. (Speer ballistics workshop, 1996) This ammunition must be quality ammunition that has been tested and evaluated for the department. The next largest expenditure will be instructor update training. Where the training is located and the organization which sponsors it will depend on cost.

Over the past several years the department has spent an average of \$4,800.00 dollars a year on ammunition alone. There has not been any instructor update training, and needed equipment purchases. Most of the current equipment has been donated to the department from individuals involved in the citizens police academy. The money for ammunition has been taken out of other sources within the department. There have been times that officers have provided their own ammunition and qualified on

their own time due to lack of funds. In an article of the The Police Marksman, on In-Service Firearms Training, author Dave Grossi stated "The bottom line is this: In-service training is a continuing educational process that should take place throughout an officer's entire 20 or 25-year career. An expert's examination of an officer's cumulative firearms training record should show a continued course of relevant, progressive training that would cause a judge or jury to conclude that the officer is, indeed, a highly trained, competent professional qualified to handle high-stress threat situations with proper police action." (Grossi, 1996:40)

In many instances the state or the federal government has mandated that local governments comply with guidelines, but has not provided the funds to handle those mandates. When the municipality is burdened by the financial drain of a civil litigation, that is not the time to decide to develop and implement a progressive training program. The governmental entities that have the responsibility to train must find the funds to cover needed expenses.

CONCLUSION

This proposal is to be used to assist the City commissioners and the Chief of Police in reaching an informed decision on the firearms training program for the Dumas Police Department. The amount of training time annually should be increased to twenty-four hours per year for each officer. There is a need to

increase the total number of rounds to twelve hundred per officer/year. This increase in budgeted funds will act as a preventative measure to protect and reduce the possibility of civil and vicarious liability for the City of Dumas and its police department. Because of increased litigation pertaining to firearms related training across the United States, it has become prudent to increase and update the types and quality of training. The increase of civil and vicarious liability against the law enforcement agencies and its governing bodies is becoming more common due to the rulings of 42 U.S.C Section 1983.

The problem that DPD and other agencies face is not only in the area of firearms training. The quality and nature of that training are also areas of concern. Firearms training should go above and beyond the minimum state requirements. If ruled against in court for items such as: failure to train, deliberate indifference, and excessive force, these departments may be subject to large settlements. In the case of Grandstaff v. City of Borger (107 S. Ct. 1369(1985)), the court affirmed that the negligent retention of officers and deliberate indifference of the police department and its chief of police was the reason for awarding the Plaintiff over 1.4 million dollars in damages.

At the present time DPD is not spending adequate funds or dedicating sufficient training time to reduce the possible liability to the City of Dumas. It is this writer's desire to keep the citizens and the city as safe as possible through progressive and updated training in the area of firearms.

BIBLIOGRAPHY

- Canton v. Harris, 109 S. Ct. 1197(1989)
- City of Borger v. Grandstaff, 107 S. Ct. 1369(1985)
- City of Oklahoma v. Tuttle, 53 l.w. 4639, S.C. No. 83-1919(1985)
- Edholm P. "Realism in Firearms Training," Law and Order (October, 1979)
- Grassi, Richard "Qualification Controversies." Guns & Ammo, Firearm for Law Enforcement 1996: 84-87.
- Grossi, Dave "In-Service Firearms Training: Are We Stuck In A Rut." The Police Marksman March/April 1996: 38-40.
- Harlow v. Fitzgerald, 102 S. Ct. 2727(1982)
- Kirkman G.L. and White J.D., Police Civil Liability-A Handbook, (New York: Harper and Row, 1980)
- Kappler, V. E. and Kappeler, S.F.(1992) A research note on Section 1983 claims against the police: Cases before the Federal District Courts in 1990.
American Journal of
Police, 11
- Los Angeles Times, March 1985
- Main v. Thiboutot, 100 S. Ct. 2502(1980)
- Mathews v. City of Atlanta, 699 F. Supp. 1552 (N.D. Ga., 1988)
- Monell v. New York City Department of Social Services, U.S. 658,98 S. Ct. 20186(1978)
- Monroe v. Pape, 365 U.S. 167, 18 S. Ct. 473

Owen v. City of Independence, 445 U.S. 662, 100 S. Ct.

1938(1980)

Popow v. City of Margate, 476 Fed. Supp. 1237(1979)

Silver I., "Police Civil Liability," (New York: Matthew
Bender and Company)

Speer Gold Dot Ammunition Wound Ballistic Workshop, Amarillo
Texas, February 1996

Tennessee v. Garner, 105 S.C.R. 1694(1984)

Title 42 U.S.C. 1983(1)

Telephone survey of the following Police Departments

1. Canyon P.D.
2. Borger P.D.
3. Hereford P.D.
4. Pampa P.D.