BILL BLACKWOOD LAW ENFORCEMENT
MANAGEMENT INSTITUTE OF TEXAS

LIABILITY MANAGEMENT IN LAW ENFORCEMENT POLICY AND TRAINING

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INTRODUCTION

Law enforcement agencies today face a great challenge in matters of liability, for the actions of officers. Much of the problem stems from officers' involvement in critical incidents in two areas: use of force and emergency vehicle operations.

The number of lawsuits filed against officers and their agencies is growing at an alarming rate. In 1991, approximately 30,000 lawsuits were filed against officers and law enforcement agencies in the United States. This represents a major increase over the last thirty years as compared to 1961 when there were approximately 800 lawsuits filed. [1] As the number of lawsuits have increased, so have the costs. Awards in jury trials in federal courts in 1990 including damages and legal fees averaged $2,000,000. Out of court settlements in federal courts averaged $250,000. [2] While large government organizations may be able to sustain such losses, they can literally destroy the financial base of small municipal and county governments.

This trend places enormous responsibility on officers as well as their departments. Each decision that officers make, especially in critical incidents, is subject to multiple levels of review. The decision is not only subject to internal review by departmental supervisors, but if it results in some type of legal action, it may be subject to external review as well. These external reviews include, but are not limited to, actions by grand juries, review boards and commissions, state and federal agencies and civil or criminal juries. If these decisions are found to be deficient, both the officer and his agency may face severe repercussions.

Most of the critical incident decisions that officer must make occur without prior notice, warning or preparation. These types of split second decisions are a common part of the officer's job. Once the decision has been made and action taken, the review process begins.

In American society, the public holds public officials to a high standard of accountability, especially law officers charged with the responsibility and authority for making these critical incident decisions. Accountability is an aspect of our legal system that has come to the forefront in recent times. Many major cases like the Rodney King Case are clear examples of this. In this climate, the public not only holds the individual officer accountable for his actions, but also the agency and command structure of the agency with which he/she is employed by.

With the issue of accountability in mind, it is extremely important that agencies and their administrators and governing bodies understand the liabilities that they face, and take proactive steps to ensure that everything possible is done to provide their agency with standards that will protect it and its employees. The two most important areas of concern for management are (1) policy and operating procedures, and (2) training. By using these two areas to build on one another, many times the liability which agencies and their employees face can be reduced.

LEGAL ISSUES

To gain an understanding of how liability in policy and training issues work, one must first understand how liability is incurred. In Texas, liability suits against law enforcement agencies and officers, have been brought in both state and federal courts. These suits are based on common law tort theory, state civil rights law and federal civil rights statutes.

COMMON LAW TORT ACTIONS

In Texas, civil liability is based on what is commonly known as 'tort' law. A tort is defined as a legal wrong committed against a person or the property of a person. Torts differ from crimes in several ways. Unlike crimes, which are prosecuted in the name of the state or government, tort claims are filed by or prosecuted in the name of the injured party. Torts also differ from crimes in that the plaintiff seeks monetary damages for a wrong as opposed to confinement and/or fines assessed to the defendant. The most important difference between torts and crimes is the standard of proof required for conviction. In criminal trials, the standard of proof is "beyond a reasonable doubt", while torts require only a "preponderance of the evidence".

Intentional torts are actions that arise from purposeful acts of a person that by their very nature are meant to cause injury. To recover damages in this type of action, a plaintiff must prove three things:

1. The action was committed by the defendant.
2. The defendant acted intentionally or there was a substantial certainty of the results from the defendants actions.
3. The defendant's act or actions caused injury to the plaintiff.

Most of the intentional tort actions filed in police liability cases deal with false arrest, assault, excessive use of force and wrongful death.

Negligence is another form of tort action, one involving unintentional acts. Negligence cases usually allege that the officer either acted improperly or failed to act, and by doing so caused unintentional injury to another. Many negligence cases involve the allegation of improper training or supervision by the agency. Cases often involve use of firearms, pursuit driving, handling of prisoners and other responsibilities specific to law enforcement. This type of suit is becoming the most common police liability action because it involves an easier burden of proof than intentional tort cases do. In the intentional tort cases, the plaintiff must prove that the defendant acted in a premeditated manner and that the action taken would produce an outcome that was injurious to the plaintiff. In the unintentional tort that plaintiff merely has to prove injury or loss based on the defendants action or lack of action without proving a deliberate intent of the defendant to cause injury of loss to the plaintiff. This type of case is also more difficult to defend when agencies do not properly review policies and training procedures in a timely manner.

STATE CIVIL RIGHTS LAW

Unlike tort law in Texas, the civil rights statutes are criminal laws but due to the nature of what they cover, they can become an important part of a tort action. In Texas, the civil rights statute is found in Chapter 39 of the Texas Penal Code, which deals with abuse of office. This chapter covers several different areas of abuse of power that include not only physical abuse, but also official oppression and misuse of official information. Much of the wording in the Texas civil rights statute follows federal statutes. The Texas statute states in part:

> A public servant acting under color of his office of employment commits an offense if he:
>
> 1. Intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;
> 2. Intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power of immunity, knowing his conduct is unlawful; or
> 3. Intentionally subjects another to sexual harassment.[3]

Many times when criminal charges are filed under these statutes, an accompanying civil action will also be filed. In the civil action much of the information and evidence gathered and presented in the criminal trial will also have a great effect on the outcome of the civil action. It is because of the duplication of evidence discovery that this section of criminal law can have such an effect on liability litigation.

In most instances the civil trial will not occur until after the criminal proceeding is finished. The attorney(ies) for the plaintiff will subpoena all evidence that was used in the criminal prosecution and introduce it into evidence in the civil trial to prove their pleading. If a guilty verdict was obtained in the criminal trial, the introduction of evidence and testimony from that trial will just about guarantee a similar verdict and award in the civil trial. This is due to the fact that in order to obtain a criminal conviction based on the civil rights statute, the prosecution must prove intent on the part of the defendant in the violation charged.

FEDERAL LIABILITY ISSUES

A significant percentage of the approximately 30,000 police liability lawsuits filed every year are filed in Federal District Court. Most of these cases are filed under Title 42 U.S.C., Section 1983. This statute states in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other persons 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 or redress.[4]

Title 42 U.S.C. Section 1983 was originally passed into law during the post civil war reconstruction era. The original purpose for its enactment was to help protect the rights of the newly freed Southern slaves and to help enforce the Thirteenth and Fourteenth Amendments. In the last few years, as more attention has focused on abuse of police power, use of this statute has been significantly increased. The main use of this statute is to compensate those whose rights are violated, and therefore to seek to prevent further abuse of power.

Section 1983 provides a basis for a plaintiff to bring suit in federal or state court. To use this statute a plaintiff must allege two elements:

1. That the plaintiff was deprived of a right, privilege, or immunity guaranteed by the Constitution and the laws of the United States.
2. That the defendant at the time of the alleged act of deprivation was acting under color of a statute, ordinance, regulation, custom, or usage of a state or local law or ordinance.

While this may seem to state that Section 1983 would cover almost any act that could be a violation of the Constitution or federal statute, this may not be true. In order for this to be a valid claim of deprivation of Constitutional rights, the abuse must be of such a magnitude to show a clear intent by a government agent to violate the statute of the Constitution.

The use of legal actions and how they specifically apply to policy and training will be covered in more detail later. It is important to note, that one way of reducing litigation expenses is for administrators to continually review recent court decisions. When there is uncertainty as to how a court decision may effect the operation of an agency, the administrators should seek competent advice from the legal counsel that represents the agency. This course of action may save both money and unnecessary effort by avoiding legal pitfalls.

POLICY ISSUES

The area of policy governing the actions of employees is becoming an ever increasing issue in lawsuits. Many of these suits address this issue through the avenue of failure to supervise. With this in mind, it becomes incumbent that administrators insure that their policies reflect changes mandated by the most current court decisions.

At the same time, administrators must resist making sudden changes in policy without proper review. Many times after a major critical incident occurs within an agency or is brought to prominence by media coverage, administrators will contemplate major policy changes without gathering all of the facts and reviewing the need for change.

An excellent example of this occurred in Los Angeles in the early 1980's. At that time, the Los Angeles Police Department had several prisoners die in custody after being restrained by choke holds. The Los Angeles Police Department immediately changed its use of force policy to prohibit the use of this restraint. What they did not find until a review some years later, was that just as many prisoners died after the policy change. The cause of all of these deaths was not the use of force but drug overdoses by the prisoners on crack cocaine which was just starting to gain wide spread use at the time. Policy changes that are made in haste can actually increase liability because by the very change in policy the agency may be admitting that the original policy was flawed to begin with.

The term policy is usually thought of as a formal written doctrine set down within some form of manual or general order. However, in legal application, policy can also be defined by specific orders given by supervisors in reaction to a situation and customs within an agency.

This was found to be true in the 1978 case of Mondell v. New York Department of Social Services.[5] In this case the court held the agency liable for actions of employees based not only on their actions under formal policy, but also on acts of custom. In this and other decisions, the courts find that once a certain manner of action becomes part of the routine operation of any agency, it begins to govern the actions of employees and, therefore, becomes an informal but accepted policy.

Agencies must also realize that when either formal policy or custom directs the action of the employee, the main burden of responsibility no longer lies with the employee, but with the agency itself. The reason for the transfer of responsibility is due to the fact that so long as the employee is operating within the scope of policy, the agency has removed the discretionary decision-making responsibility from the employee and has mandated their action in a particular situation. When the agency by policy directs employee actions, it must insure that proper training accompanies the mandate. This requirement is well documented in the 1989 case of City of Canton v. Harris.[6]

In the case of Canton v. Harris, Harris was arrested by Canton Police on a charge of public intoxication. Upon arrival at the jail, Harris, who was a diabetic, claimed illness. It was the policy, at the time, that the supervisor on duty examine any prisoner to determine whether medical attention was needed. The supervisor, believing that the effects of illness were due to the intoxication, failed to order medical attention. After release from jail, Harris was hospitalized for several days. In reviewing this case, the court, held in part:

> The issue ... is whether that training program is adequate; and if it is not, the question becomes whether such inadequate training

> can justifiably be said to represent "city policy". But it may happen that in light of the duties assigned to specific officers or employees that need for more or different training is so obvious, and the inadequacy so likely to result in the violation of Constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need. In that event the failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable if it actually causes injury.[7]

The point that this case clearly demonstrates is that policymakers must carefully review their agency's operational procedures. This case does not specifically identify the point if the supervisor's responsibility was a formal written policy or custom. In Canton v. Harris, the court ruling made it very clear that whether it was by formal policy or custom, actions of the supervisor, because it was a regular part of his duties was acting under policy and therefore the agency is responsible. The remainder of this section on policy will look at two of the most critical issues in policy litigation today, use of force and emergency vehicle operations.

USE OF FORCE

When the term "use of force" is used, the issue that first comes to mind is deadly force. Effective use of force policies must encompass much more than firearms. An effective use of force policy must cover the entire spectrum of force and set the guidelines for training and review of the use.

This need for control of all types of force usage was brought to dramatic prominence with the Rodney King Case. As it is well known, this case has had one of the most dramatic effects on police use of force in this nation's history. The first trial verdict on the officers involved brought about a riot that equalled or surpassed in violence, property loss, and destruction of the Watts riot of 1965. Chief Daryl Gates, of the Los Angeles Police Department, was ultimately forced from office, and the City of Los Angeles was hit with a civil judgement that, by the time all court and legal costs are figured, will be approximately $100,000,000.

In establishing a use of force policy, an important issue that must be included is escalation of force continuum. This continuum establishes guidelines for escalation of force from more officer presence to the use of deadly force. By codifying this continuum in formal policy, the agency gives the officer a clear guideline. This continuum is one of the key issues that is used to teach use of force in many officer survival courses. The continuum may be described as follows:

1. Presence - create a positive environment as possible
    a. open stance
    b. ready stance
    c. defensive stance
2. Dialogue
    a. persuasion
    b. light control (advice)
    c. heavy control (warnings)
3. Empty Hand Control
    a. escort holds
    b. compliance holds
    c. passive countermeasures (blocks)
    d. active countermeasures (approved strikes with hands, elbows, knees and feet)
4. Impact, Chemical and Non-Lethal Weapons
    a. verbal warning
    b. presentation (drawing and exhibiting the weapon)
    c. use of weapon (approved strikes or application)
5. Firearms
    a. verbal warning

b. presentation (includes drawing and pointing the firearm)

c. use (firing the firearm)[8]

The most important part of the use of force continuum is verbalization. At every level of the continuum, the officer has a responsibility to verbalize commands to keep the situation from escalating and to warn the offender of the consequences. This may, at times, actually occur by necessity while the action is being taken due to the actions of the offender. This verbalization can be very important when uninvolved witnesses are present. If these witnesses can testify that, even while the officer is applying some type of force, he is constantly verbally instructing the offender to submit. This may reduce potential liability because of their supporting testimony.

Another consideration in use of force policy is the commitment of the agency's administration to the consistent application of the policy. If a policy is not uniformly applied it causes confusion, misunderstanding, and frustration among members of the agency. It has been found that in agencies where the administration requires uniform compliance to a policy by all members, there are fewer abuses of the policy.[9] This uniformity of application must be constantly maintained and monitored to avoid problems. Any time there is any change in administration, a reassertion of commitment is needed to assure officers of the continued necessity of compliance.[10]

Officer knowledge and understanding of use of force policies is also critical. This is one area that creates many violations and therefore liabilities. When any policy is instituted or

changed, it is imperative that administration makes sure that all officers understand exactly what the policy means and that any questions they have are clarified. Failure to do this can have disastrous effects and lead to costly litigation.[11]

DEADLY FORCE

The most important part of any use of force policy is deadly force. Rules regarding police use of deadly force reflect an attempt to balance the competing goals of crime control and individual liberty. For many years, there was a great deal of disparity in use of deadly force by police. Many agencies had few, if any, guidelines regarding officers' use of deadly force in felony arrest situations. This changed in 1985 with a Supreme Court case, Tennessee v. Garner. While much of this case decision was symbolic, it for the first time required departments to establish specific guidelines for deadly force felony arrests.[12]

There are four basic policy models for use of deadly force. Each of these policies places a different emphasis on the balance between suspect apprehension and sanctity of human life:

1. Any Fleeing Felon Rule

   This rule is based on old common law rule that deadly force can be used to stop any felony suspect, regardless of offense. In Tennessee v. Garner, this rule was limited to only cases involving dangerous fleeing felons.

2. Model Penal Code

This policy limits use of deadly force to situations where the officer believes (1) that the crime committed involves use or threat of deadly force - (2) that there is substantial risk that the suspect will cause death or serious bodily injury if apprehension is delayed.

3. Forcible Felony Rule

This rule is not very different from the Model Penal Code. Under this rule, deadly force is justified to effect the arrest of suspects in certain specified felonies which pose a risk of great bodily harm or death the arrest of suspects in certain specified felonies which pose a risk of great bodily harm or death. Those felonies usually include murder, arson, mayhem, burglary, aggravated assault, rape, kidnapping, extortion and robbery.

4. Defense of Life Standard

This is the most restrictive of the policy models. Under this policy, deadly force can only be used when someone's life is in direct jeopardy, regardless of how heinous a crime the suspect has committed and the level of potential danger of the suspect.[13]

Since the Tennessee v. Garner decision, a great deal of study has been done by agencies and law enforcement organizations regarding deadly force issues. One agency which has done research, and written some model guidelines is the International Association of Chiefs of Police (I.A.C.P.). Shortly after the Garner decision in 1985, the I.A.C.P. published these guidelines. In the guidelines they suggest that a policy begin with both a definition of deadly force and a statement regarding the value of human life.[14]

As part of their guideline recommendations, they also suggest that the use of a combination of the Model Penal Code and Forcible Felon Rule, following Garner, be guidelines for authority to shoot at fleeing felons. The I.A.C.P. also suggests that:

1. No distinction be made with regard to use of force against juveniles versus adults.
2. Warning shots be prohibited.
3. Deadly force be prohibited where innocent parties might be injured.
4. Strict restrictions in shooting at or from moving vehicles.
5. Killing of animals be allowed under specific situations.
6. Departments regulate types of weapons and ammunition used.
7. Departments regulate the carrying of secondary (backup) weapons.
8. Officers be encouraged but not mandated to carry off duty weapons.

9. Soft body armor be mandated.
10. Officers involved in shooting be placed on "administrative leave" following the incidents.
11. Psychological counseling be required for officers involved in shootings.
12. Firearms training and certification levels be established.
13. Departmental investigation process of officer involved in shooting be part of written policy.
14. Legal disclaimer that departmental policy and guidelines not be the standard for criminal or civil liability; instead alleged excessive force complaints or lawsuits should be based on state law.[15]

EMERGENCY VEHICLE OPERATIONS

Emergency vehicle operations is another area that presents considerable liability risks to law enforcement. Many times, these operations involve vehicle pursuits. For many years, police officers felt that once a pursuit was begun, you didn't stop for anything and every officer who could get there was free to join in the pursuit. This type of thinking is no longer possible. Today, to protect from liability, agencies must enact and enforce very specific emergency

vehicle operation policies. The concept which must regulate agencies today can be reduced to a simple concept: when the risk created outweighs the need for immediate apprehension, the pursuit should be terminated.

The real issue in framing an emergency vehicle and pursuit policy is risk versus need for apprehension. In establishing a pursuit policy, most of the issues that are applicable to use of deadly force can apply as well. The issues which should be considered in a policy must include:

1. Law(s) involved in beginning pursuit.
2. What is known about suspect.
3. What is known about the law violation.
4. Likelihood of injury to innocent bystanders.
5. Probability of later apprehension.
6. Danger suspect presents if not apprehended.[16]

To gain a proper prospective in pursuits, the policy must make the officer understand that the most important point to consider is that public safety must be the principle consideration. The safety consideration must be strongly emphasized to all officers, because many times in the heat of the action, officers concentrate on the apprehension, and forget other considerations. The pursuit policy should also include provisions for limiting the number of units involved, with two being the number normally recommended. The policy should establish a method of control by a detached supervisor, who monitors the pursuit, and has authority to terminate the pursuit. Finally, the pursuit policy must provide a method of review and accountability.

The first area of consideration in a pursuit policy is safety versus need for apprehension. For many years, the pervasive attitude in pursuits was that even when pursuits were begun over minor traffic offenses, the suspect must be guilty of something more serious or they would not have fled. It must be stressed in the policy that this attitude can no longer exist. Officers must base the need for apprehension on the facts that are known at the time. Once a pursuit begins, the officers involved must keep this in mind when considering the dangers involved as the pursuit progresses. If the pursuit reaches a point where there is substantial danger to innocent pedestrian and vehicular traffic, officers must understand the need to terminate the pursuit. In all but the most unusual of circumstances, safety has to be the main consideration for termination. Two court cases that emphasize this responsibility are Brown v. Pinellas Park[17], and City of Miami v. Horne.[18] The courts ruled against the agencies, stating that the pursuits did not meet the criteria of need for apprehension versus the public safety. In Brown v. Pinellas Park, the pursuit covered 25 miles at speeds of 80 to 120 miles per hour through dense urban areas, and all for the original offense of running a red light. In Brown and in Horne innocent parties were killed in accidents caused by the pursuit.

The second area to be examined is the number of units involved in the pursuit. Policy must address this issue. The more vehicles involved in the pursuit, the greater the overall danger. This danger is multi-dimensional in nature. There have been many recorded incidents in which police units running with emergency equipment on have collided with each other. Also, the more units operating emergency equipment, the more likely that uninvolved civilian traffic will be affected either in collision with a police vehicle or with the police vehicle being a non-contact vehicle that causes the accident. With this in mind, the recommended number of

police vehicles for pursuits is two, one being the primary unit which began the pursuit, and one back up unit assisting in apprehension at the time of termination of the pursuit.

The third area involves command and control of the pursuit. The pursuit policy should require that an uninvolved supervisor be in control of the pursuit. This supervisor should monitor the progress of the pursuit and make clear, cool-headed decisions. This supervisor must receive information from the involved units, including, facts about how pursuit began, location and direction of travel, speeds and driving behavior of the suspect. The supervisor then must make decisions involving safety and be ready to order termination, if warranted. If a decision to terminate a pursuit is made, all units involved must be notified and must immediately acknowledge the order and deactivate all emergency equipment, slowing to normal posted speed limits. This action will send the message that a pursuit no longer exists.

The fourth area of examination is review of the pursuit. Any time a pursuit occurs, it is important that a formal review be made and all points examined to insure that all actions were within policy. Many times when a pursuit occurs and the suspect is apprehended without incident, everyone assumes that everything was done right. This may not be the case, and unless mistakes and breaches of policy are found and immediate corrections made, this only reenforces the inappropriate action(s). This failure to examine and correct reenforces the incorrect action, which may cause severe problems in the future. It must be made clear in the wording of the policy that this review is intended to provide feedback, not to try and find fault. It is very important that the officers involved have direct input into the critique, and that all positive as well as any negative actions be noted and acknowledged. When conducted in this manner, the after action review has positive results for both the department and officer.[19]

INTER-JURISDICTIONAL PURSUIT

A final area of consideration in enacting a pursuit policy is the area of inter-jurisdictional pursuit. There are many things that can cause serious problems in this type of pursuit. Some common problems are improper or no direct communication between involved units, difference in policy, and unfamiliarity with operational methods and procedures. When inter-jurisdictional issues are considered in policy, the agency must determine what part officers will play in any pursuit by another agency that enters its jurisdiction. The policy must also address the issue of actions of officers if the pursuit leaves the jurisdiction, and what type of assistance the agency will provide in the pursuit.

Inter-jurisdictional pursuits can provide a nightmare in command and control due to lack of communication. As previously discussed, the supervisor must have reliable and up to date information on a pursuit to make proper decisions. When pursuits involving other agencies occur, this may not be possible for a number of reasons, such as incompatible radio systems. Many times, different agencies may be on different frequency bands. This is exemplified in the Houston area where state agencies are on a VHF high band, most municipalities are on the 400 Mhz UHF, and the county and some municipalities are on the 800 Mhz UHF band. A pursuit under these conditions could prove impossible to coordinate and the possibility for misunderstood communication could be disastrous. A prime example of this is the 1989 case of Parson v. City of Claremore et al.[20]

In this case, Mr. Parson was rushing his pregnant wife to the hospital. He was stopped by a Tulsa city officer, and explained the situation. The Tulsa officer was going to escort him, but Mr. Parson, being nervous, left with the Tulsa officer attempting to catch up. A Rogers County officer observed the chase, joined in, and radioed for a roadblock to be established by Claremore Police. As the Parson vehicle entered Claremore, Claremore officers set up on the roadside and opened fire on Parson's vehicle. Fortunately no one was injured in the incident, but the case still resulted in a civil suit and large judgement.

With all of the possibilities for problems that exist in these type of pursuits, model policies make several suggestions. First, unless the exact nature of the offense which occasioned the pursuit is known, the agency should play only a support role, with the aim being to protect uninvolved persons from danger. Second, unless some incident occurs within their jurisdiction, the control of the pursuit should remain with the primary agency. Third, officers from the agency should not join in and leave the jurisdiction, except under some extreme circumstance when their assistance has been requested.[21]

TRAINING ISSUES

Training, as it applies to the issues of use of force and emergency vehicle operations, is becoming ever more important. This focus lies in the authority that law enforcement officers have to use these areas to effect arrest and seizure under the Fourth Amendment of the U.S. Constitution. As both of these areas have the potential for deadly force, they represent the ultimate exercise of that authority.[22] This responsibility to properly train has been addressed by a number of court cases. In almost all of those cases, the central theme was the lack of proper training by the agency. The courts have held, in some of these decisions, that the training must not only be relevant, but also continuing. The purpose of training is to support the policy that covers the area.

USE OF FORCE

The area of use of force is an area that requires multi-level training. Not only must the proper use of the weapon be taught, but also issues of liability and when to use the weapon. This applies to use of non-lethal as well as deadly weapons. Training must constantly be updated and revised as legal and tactical situations change and develop. The use of force continuum must be an integral part of a use of force training program.

The use of force continuum gives officers the ability to quickly evaluate a situation and then determine the proper type of action to take. This type of training can keep situations from

developing into a use of force or de-escalate and limit the level of force needed to accomplish the necessary task of apprehension. An example of what can happen without this as part of use of force training occurred in Los Angeles in 1979:

> On January 3, 1979 Los Angeles Police Department officers were dispatched on a call involving utility company employees and a homeowner. When the first two-man unit arrived, they found an elderly black female holding a gas company employee at bay with a kitchen knife. The officers exited their vehicle and began to approach the female. Both officers drew their revolvers and one had his baton in his weak side hand. As the officers approached, the female began to back down a walkway toward the porch of her house. As she did so she was yelling at the officers to go away and made several slashing motions with the knife. The officers closed in on the female and the officer with the drawn baton knocked the knife from her hand. The officer and female both dove for the knife and the female retrieved it. At this point the female raised the knife as if to throw it. Both officers at this time fired six rounds each. Eight of the twelve rounds struck the female, killing her instantly.[23]

The officers in this incident were both cleared of any criminal wrong doing, but the city was involved in controversy for years, resulting in hundreds of news articles, reports, several commission investigations, and a congressional subcommittee hearing.[24] While this incident did

not result in a lawsuit, it had dramatic effects on the agency and untold thousands of dollars in legal expenses and man-hours were involved in answering the allegations and inquiries. Had those officers been given proper training in a use of force continuum, there is a real possibility that this incident would have come to a much different conclusion.

In use of force training, it is also necessary to insure that the training meet the real world needs of the employees. This is especially true in firearms training. The common training that most officers receive involves target practice on stationary targets, at prescribed distances, under daylight conditions. There is usually very little, if any, training involving safety and liability issues and judgmental issues training. Under such cases as City of Canton v. Harris, the courts have ruled that unless training is formulated to be task-related, it reflects a deliberate indifference to proper training.[25] Training must meet relevant standards in usage as well. This means that training must occur under realistic conditions and circumstances. In many agencies, the officers train and qualify with ammunition that is substantially less powerful than what they carry on duty. This practice can lead to real problems when officers must use their weapons in real life encounters on the street.

Most agencies train officers on the firearms range during daylight hours. However, due to law enforcement agencies' mission, officers may be called upon to engage in deadly force incidents in all types of weather and light conditions. With this in mind, and to avoid undue liability, agencies need to train under multiple light and climate conditions to show officer proficiency in diverse situations.

The training should also involve judgement issues of when to shoot. Until recently this type of training was difficult to obtain and simulate. Technology advances have now provided

valuable assistance in this area, with a number of methods currently available. One is a computer generated video system known as F.A.T.S. This system allows officers to be placed in a variety of situations, and then measure the officer's reactions on judgement and proficiency by measuring elapsed times, number of shots fired and number of hits.

To meet the ever growing needs for effective use of force policy, several model policies have been written by different advisory groups, such as I.A.C.P. These recommendations include the following:

1. All weapons, including impact and non-lethal be regulated and trained with on a regular basis.
2. All officers be required to train and qualify with any and all weapons carried or authorized, including off duty weapons.
3. All qualification be done with the caliber and type ammunition carried on duty.
4. That training be done under diverse situations, including night time and various weather conditions.
5. That training include updates on current legal issues affecting use of force.
6. That training include judgment situations, such as shoot/don't shoot.
7. That continuum of force training be reviewed in all training sessions.

EMERGENCY VEHICLE AND PURSUIT TRAINING

As was discussed in the policy section, this area of police operation also has come under legal scrutiny. Training in emergency vehicle operations should cover several areas. These areas should include legal review and driver training. As part of the legal review, officers should review departmental policy and updated legal cases that pertain to this area. As the policy is reviewed, questions that officers have about it should be covered to remove the officer's uncertainty. The training should also include hands-on driver training that deals with high speed driving skills that are utilized in pursuits. There are a number of these courses which have been devised and have withstood testing in court actions. As with any other kind of training, driving training must be an ongoing effort where officers are periodically updated and retested to show continuous proficiency.

CONCLUSION

The focus of this study has been reduction in liability issues. To accomplish this purpose, we have addressed issues of policy and training with the idea that through effective application, they can help in reducing litigation. It is important to understand that for either of those two points to be effective, they must work in concert. Policy acts as the framework that gives the organization form and direction. Training is what gives motion to the organization by providing the knowledge and tools for policy to be put into action. When either one of these two fail to support each other, then the potential for failure is real.

Even under the best circumstances, when an agency has done everything possible to do what is right, litigation can still occur. When this happens, the expenses in legal fees alone can be costly, but not as expensive as judgements, when the agency is found to be at fault due to improper training or policy. In the introduction of this paper the costs of unsuccessful defenses was shown to average in the quarter of a million dollar range for out of court settlements, and in the millions of dollars in jury verdicts. To show the contrast of cost in successful defenses, the Intergovernment Risk Pool Office of the Texas Municipal League provided information on four recent use of force cases. In each of these cases, the plaintiff challenged not only officer actions but also departmental policy and/or training. Each of these cases will be listed by name and the defense legal costs.

Clark v. Sanburn $74,000

141 Dist Ct, Tarrant County, Texas

Stadry v. City of Robstown	$84,000
U.S. Dist Ct South Dist, Corpus Christi	
Duckett v. Hamilton	$54,000
U.S. Dist Ct West Dist, Austin	
Fields v. City of South Houston	$85,000
U.S. Dist Ct South Dist, Houston	

While it is clear that those defense costs are not cheap, they are substantially cheaper than the cost of accompanying judgements had the plaintiffs won. While training and policy will never eliminate lawsuits in the litigation intensive society in which law enforcement must operate, proper policy, supported by training can do much to lessen the threat. While some of the training that has been discussed and recommended is not inexpensive, it is certainly less expensive than the amounts granted plaintiffs in successful suits.

One other point that must also be considered in this area of liability is the damage to the reputation of agencies that successful lawsuits bring. Prior to the Rodney King incident, the Los Angeles Police Department was looked to by many as a model of high standards and efficient police operation. Today, when the Los Angeles Police Department is mentioned, the first thing that comes to mind is not the decades of efficient, progressive police work they used to be known for, but the Rodney King Case and all of the accompanying fallout including the May 1992 riot.

END NOTES

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5. Mondell v. New York Department of Social Services, 436 U.S. 658 (1978).
6. City of Canton v. Harris, 109 S. Ct 1197 (1989)
7. Ibid.
8. Remsberg, Charles and Anderson, Dennis. Street Survival '92 Workbook, Calibre Press Inc. 1992. p. 92
9. Alpert, Geoffrey P. and Fridell, Lorie A. Police Vehicles and Firearms Instruments of Deadly Force. Prospect Heights: Wakeland Press Inc., 1992. p. 92
10. Ibid, p. 93
11. Ibid, p. 93
12. Ibid, p. 69
13. Ibid, p. 70-71
14. Ibid, p. 73
15. Ibid, p. 74
16. Ibid, p. 117
17. Brown v. Pinellas Park, 557 So. 2d 161 (Fla App. 2 Dist 1990)
18. City of Miami v. Horne, 198 So. 2d 10 (Fla 1967)
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20. Parson v. City of Claremore, U.S. Dist. Ct. for Northern Dist. of Oklahoma, Case No. 89-C-L87-B (1989)
21. Alpert and Fridell, Op. C it. p. 126-127
22. Hall, John C. "Firearms Training and Liability (Part 1)" FBI Law Enforcement Bulletin 62 no. 12 (1992) p. 19
23. Alpert and Fridell, Op. C it. p. 63-64
24. Ibid, p. 63-64
25. Hall, John C. "Firearms Training and Liability (Conclusion)" FBI Law Enforcement Bulletin 63 no. 1 (1993) p. 29
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