

The Bill Blackwood  
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Does the Use of Realistic Training Lower  
a Law Enforcement Agency's Liability Exposure  
Involving Use of Force Issues?

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## ABSTRACT

The use of force by police officers has been brought to the forefront in recent years and is an issue that is costly both in terms of lives and finances. A close look at the situations involving problems concerning uses of force shows that the training received by officers, or the lack thereof, is the driving force behind these problems. Training then is also the answer to these problems; however, this is a situation that needs to be corrected as soon as possible. Due to this fact, the best possible method of training needs to be discovered. Numerous different teaching techniques are available and this study was a comparison of those techniques in order to discover if realistic training in particular was a better approach than others.

A mailed survey was used to query different police agencies across the country as to the type of training methods that were used within those agencies. One question specifically asked was if realistic training was being used by an agency. Additionally, questions were posed as to whether the agency had been able to measure the success of that realistic type of training.

The expectation of this study was that realistic training would be proven beyond a doubt to be the best form of teaching available to law enforcement. What was found was that each type of teaching has a place within the law enforcement community. While realistic training was not proven to be a panacea, it was shown to be absolutely necessary as a part of a police agency's training program. Realistic training is also not a guarantee against a lawsuit, however, it can be a factor in reducing the amount of liability exposure that an agency faces.

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## Introduction

At various times in the past, police officers have been killed or seriously injured in the line of duty. An investigation of these incidents has at times shown that the cause of the death or injury was due to the fact that the officer reverted to actions that they had learned during their training (Adams, 1980). A close look at these situations brings to light the fact that past, and possibly current, training tactics are ineffective where the realm of use of force is concerned particularly when officers are involved in stressful situations where less than lethal force is necessary. The aforementioned situation can, and does, lead to liability concerns for a police department. The issue that needs to be examined, then, is how officers can be trained in order to best protect themselves and those with whom they come in contact, as well as reducing the liability exposure for their departments.

The purpose of this research is to examine the available training tactics that law enforcement personnel are subjected to and determine if any of these methods can be viewed as more successful than others. Specifically, the question to be answered is whether realistic training can lower a department's exposure to liability as compared to merely classroom training in the area of use of force issues. This liability can originate from officers or their families, due to an injury or death sustained as a result of training that failed to address real world issues. It can also originate with people the officer deals with or their families, due to an injury or death sustained because the officer did not receive realistic training that conditioned them to react properly.

Data for this research was gathered through a mailed survey. This survey was sent to 70 police departments nationwide that conduct their own training academy. The reasoning behind using those departments that utilize in-house training is to insure that training techniques can be tracked over the career span of the officers within those departments. A department that sends

its officers to separate training academies may not be able to answer questions pertaining to the type of training their officers have received. The survey will try to ascertain what type of training a department has conducted for its officers, as well as whether lawsuits have been filed against the department based on that training.

It is hypothesized that those agencies that have used or are using realistic training will be exposed to a lesser degree of liability than those who utilize standard classroom training only. An additional benefit of the research may be to indicate the prevalence, or lack of, agencies using realistic training techniques.

The anticipated outcome of this research paper is that police departments may find it advantageous to incorporate a program of realistic training into their curriculum if it is discovered that such training reduces liability. The benefits of this type of training could have a tremendous impact on the costs that a department may bear due to a lawsuit involving training issues. If a department, because of its use of this training tactic, can realize a lowered liability exposure in lawsuits then one can see that any realistic training will be worthwhile. Law enforcement as a whole would see a benefit due to the fact that officers, organizations and citizens would be better protected from improper responses involving use of force.

## **Review of Literature**

Law enforcement officers have traditionally been their own worst enemy in almost all facets of their work and use of force issues are no exception. The U.S. District Court for New Jersey heard the case of Popow v. City of Margate (1979). This case involved a police officer from Margate, N.J. who was pursuing a kidnapping suspect. The officer fired at the suspect but he missed and struck an innocent bystander that happened to be on his front porch at the time. This case was decided in favor of the victim's wife and set up new standards in law enforcement

firearms training. In particular, the court stated that the training that the officer received in the police academy approximately ten years earlier and the shooting instruction every six months thereafter did not constitute proper and acceptable training to prevent the city from being liable. The court in its opinion suggested that moving targets, night shooting and simulation training involving the types of situations that the officer would actually encounter were necessary to show proper training techniques. It could also be concluded that the training needs to be done by personnel who are qualified to conduct the particular training session and that the training should be properly documented. Further, it can be seen that the effectiveness of the training needs to be assessed. It was due to the lack of the aforementioned training that caused the City of Margate to suffer damages in this lawsuit because a finding of gross negligence was deemed to have occurred.

Another landmark case involving the use of force is Tennessee v. Garner (1985) that was decided by the U.S. Supreme Court. This case involved the shooting of an unarmed fleeing felon by officers of the Memphis, Tennessee police department. This case is used as a basis for training involving the application of force. The main thrust of this case is that law enforcement must be properly trained in the application of force no matter the situation.

The U.S. Court of Appeals for the District of Columbia Circuit looked at a case where there was a pattern of deliberate indifference on the part of a municipality for the lack of training of its officers. Deliberate indifference is a situation in which administrators of a municipality knew or should have known that an act or lack thereof would cause a violation of a constitutional right. This deliberate indifference toward the training of officers was shown to be the contributing factor to the injury received by the plaintiff. In this case of Parker v. District of Columbia (1989) the court found the municipality as being at fault because of a failure to properly train its personnel.

The U.S. Court of Appeals for the Sixth Circuit held in Russo v. City of Cincinnati (1992) that minimal training for law enforcement officers might not be sufficient to avoid being held responsible for failure to train. Furthermore it held that just because a law enforcement agency has provided minimal training for its personnel does not mean that the training will be adequate to address the issues that an officer may face in his/her line of work. The court stated in its opinion that the training that officers had received was not of sufficient nature to “assure a proper understanding and appropriate response to a situation of this sort”. This finding led the court to declare that the training offered by the City of Cincinnati was “insufficient in and of itself to shield the City from liability”.

Recently, the case of Zuchel v. The City and County of Denver (1993) was before the U.S. Court of Appeals for the Tenth Circuit. The case involved a Denver police officer that had shot and killed a citizen in Denver. The basis for the suit was that the city was deliberately indifferent to the inadequacy of its training program and was therefore liable. The city had in place a “shoot-don’t shoot” training program, however, it was found to be woefully inadequate when viewed by an expert in police training. The expert further found that live role-play exercises were of much better effectiveness in the training of officers. The court held that officers within big cities are going to encounter situations that will force them to make judgments about using deadly force and since this is the case, then departments should be periodically training its personnel as to the proper response to insure that mistakes are not made.

Since training has been shown by the courts as necessary to insure that mistakes are minimized we must then look at the different avenues of training in order to determine if we are being successful. Much of law enforcement has kept pace with the changing times particularly in the area of equipment and technology however training has not done so. Law enforcement training has for years seen the use of classroom lecture as the predominant form of information

exchange (Wilson 1992). While this form of teaching has been predominant it does not necessarily mean that it is the best, especially for use of force training. Indeed, any type of classroom only training cannot cover this type of material as effectively as realistic training (Zuchel v. Denver 1993). Another technique that has been used within law enforcement has been the use of static targets in firearms instruction for both the academy setting and in-service training. This strategy of instruction has not only been regarded as less effective by the courts, but also shown to be less effective according to scientific studies (Funke, J. 1988). Additionally, the same arguments can be applied to other areas involving use of force (e.g. defensive tactics and baton use) since the same physiological elements are present as with use of firearms.

It can be seen from a study of use of force related court cases that a municipality can be held liable for the acts of its personnel if it is shown that the agency used substandard training techniques. Further, courts have demonstrated with Zuchel v. Denver that classroom only training, or static target firearm instruction is being considered substandard as a training technique (Zuchel v. Denver, 1993). Therefore, it can be seen that those agencies that are currently using only these types of training run the risk of being held liable for mistakes made by its personnel.

Since it has been shown that traditional teaching methods fall short, an examination must be made of those methods that do work. Studies have been conducted within the educational field regarding this very issue. Situated learning, simulations, realistic training or any other name that describes an instructional technique that allows persons to experience real life situations within a controlled environment are all readily available in our present time. Many benefits can be realized from this type of learning such as participants experimenting in solving realistic problems by using their knowledge, skills, personal attitudes and previous experiences (Cairns, 1995).



Numerous other fields besides law enforcement have used realistic training in order to acclimate the learner to their future work. Law schools often use mock trials in order to allow pre-law students the experience of being fully involved in a court case (Hendrikson, L. 1984). The military has begun to use simulations of battlefield experiences in order to prepare its soldiers for what they will encounter. Engineering students will often design mock-ups of structures. All these simulations, or realistic training scenarios, provide a safe, cost effective place for students to learn from their experiences. This type of learning reflects how the knowledge and skills learned will apply in real life situations (Lankard, B. 1995). Educators have come to understand that what allows us to master a new skill is the active participation in an event and then a reflection upon what we experienced. (Conner, M. 2000). When we think back to any skill that we have mastered, we see that it is only after much participation in the event that we begin to know all the subtleties involved. Many times it is these subtleties can be the difference between merely completing a task and perfecting it. In law enforcement, knowing the subtleties can mean the difference between a successful outcome and death or serious injury.

It is known that learning certain skills is based on the premise that many times that skill can only be used in a specific type of situation (Stein, D. 1998). With this in mind, we see this applies to police work in almost every area. There are no other jobs that match what is done in police work, even when considering the role of the military. As such, the training received by persons in law enforcement must be geared to their particular experiences.

At present law enforcement has many tools available to assist in conducting training that is both realistic and relevant. One of the more well known, at least in the law enforcement community, is the FireArms Training System or FATS. This training involves the use of a computer controlled video projection that allows an officer to view numerous different scenarios involving the use of force. The officer then has to react to the scenario in a manner that will

bring it to a successful conclusion. The definition of successful being determined by what is occurring in the scenario at the particular time that force is used.

Another realistic training system available to law enforcement is the Simunition System. Simunitions is based around the simulated ammunition used. Simunitions is a plastic pellet containing a marking solvent that deploys when it strikes an object. The purpose of the Simunitions system is to allow people to interact with officers in realistic scenarios involving the use of force. Simunitions is similar to the FATS system in that it allows interaction by the officer, but different in the fact that live role players are used, thereby allowing a three-dimensional scene rather than only two-dimensional. Additionally, blank ammunition can be utilized with live actors for scenarios in order to make training situations as realistic as possible.

Several considerations have to be looked at in order for a department to choose which type of realistic training system will best suit its needs. Cost, manpower, and physical facilities are just a few factors to be taken into account by a department. Each type of realistic training has benefits and drawbacks, however, it still remains possible for some type of realistic training to be conducted by all law enforcement agencies no matter the size or budget constraints.

## **Methodology**

Liability concerns are ever present within most, if not all, law enforcement agencies. While nothing can be done to completely stop an agency from being the defendant in a lawsuit, everything reasonably possible can, and should, be utilized to protect the agency and the community from this type of loss. It is because of this that the question is being asked, does the use of realistic training lower a law enforcement agency's liability exposure involving use of force issues?

It is hypothesized that those agencies that have used or are using realistic training will be exposed to a lesser degree of liability exposure than those who utilize standard type training such as classroom lecture only. This reduction in liability exposure will be due to the ability of an agency to show that everything reasonable has been done in order to prevent mistakes by it's officers. This line of reasoning was brought about by rulings of the court system absolving governmental entities from liability related to training issues.

For this particular study a mailed survey was utilized. This survey was eight questions in length and had basically three areas of interest: 1) had the agency been involved in a lawsuit based on training issues 2) does the agency utilize realistic training of any means and 3) has the agency seen an improvement among it's officers because of the realistic training.

The survey used was sent to 70 police departments nationwide that conduct their own training academy. The reasoning behind using departments that utilize in-house training is to insure that training techniques can be tracked over the career span of the officers within those departments. A department that sends its officers to separate training academies may not be able to answer questions pertaining to the type of training their officers have received. The survey will try to ascertain what type of training a department has conducted for its officers, as well as whether lawsuits have been filed against the department based on that training. The departments that were utilized for this survey were larger in size mainly due to an attempt to insure that the respondents would indeed have in-house academies.

Of the 70 surveys that were sent to respondents, 26 returned the surveys. This resulted in an above average return rate of 37 %. While the response seemed promising, it was evident that portions of the survey would be inconclusive due to the less than precise answers that were included within it. In particular the question dealing with being involved in a lawsuit was responded to with a simple statement of yes or no. None of the respondents listed an actual case

citation that could be studied for specifics about the lawsuit. It must also be noted that none of the respondent organizations kept records that would allow for a statistical comparison between the previous training system and the newly implemented realistic training. Despite this lack of information the survey still proved to be useful.

The information obtained from the survey was analyzed to discover what percentage of respondents actually utilize realistic training. Additionally, the survey was studied to determine if there is a measurable difference in information retention between classroom only studies as compared to realistic learning techniques. This task was to have been performed by an examination of tests and performance measurement devices that were available in areas dealing with use of force training prior to using realistic training and then making a comparison to the same measurement devices after using realistic training. Unfortunately, the survey was unable to make this measurement due to the fact that respondents had not made measures of retention prior to incorporating realistic training into its programs. Finally, the survey was viewed to see if certain subjects are taught more using realistic training and, if so, whether realistic training lends itself better to those particular areas of learning.

## **Findings**

After receiving the 26 out of 70 surveys information was reviewed and it was found that the survey had not answered the questions as fully as was expected. While shortcomings in the survey did exist, it still contained useful information when examined.

**Table I**                      **Survey Results: Realistic Training and Liability Issues**

	<u>Yes</u>	<u>No</u>
Has your department ever been involved in a suit based upon a training issue?	17 (65%)	9 (35%)
Does your department use some type of realistic training?	24 (92%)	2 (8%)
Is the realistic training related to use of force issues?	22 (85%)	4 (15%)

The survey did not ask what specific types of realistic training the departments conducted, but some volunteered this information. Use of force, firearms and driving were the largest areas where realistic training was utilized. This response coincides with the areas in which lawsuits have begun to emerge in the court system. Another question that was not specifically asked was which products were used in the realistic training. The respondents again volunteered information that indicated that the Red Man suit, Simunitions and the FATS system were the commercial products used. It needs to be mentioned in this discussion that departments do not have to have any type of commercial product available in order to conduct realistic training. The benefit will still be realized, however, the students will not receive as much feedback as to how they are performing.

The respondents were also asked if the use of realistic training has helped reduce the number of problem incidents that could be attributed to a lack of or improper training. No definitive statistic could be shown by respondents, however, many stated that it was their belief that this was a true statement in their belief.

## Conclusion

The survey that was used had limitations that need to be overcome by using more specific questioning for areas such as what specific types of equipment do the departments use. Additionally, a two-part questionnaire could be used. The first part would allow respondents to know what type of data to collect and then the follow-up survey could retrieve the needed information.

After conducting research on this particular topic it was found that there is a shortfall in law enforcement in the area of training. This shortfall presented itself mainly in the area of use of force training. The judicial system within the United States has determined that law enforcement officers, and to a greater extent departments, have a fundamental duty to avoid unnecessary harm to those that they are entrusted to protect. The courts in particular have examined the causes for any harm suffered and have found that lack of training and improper training are the chief culprits. The courts have even narrowed the causes of improper training down to the issue of training not being in a manner to replicate the actual work that will be conducted.

It can be seen that the courts have ruled that law enforcement training needs to be more realistic (*Zuchel v. Denver*, 1993). It can further be seen that realistic training of some type can be accomplished by any agency. Given these facts it only stands to reason that agencies not utilizing some type of realistic training have a greater risk of a liability loss concerning use of force issues. Conversely, an agency that is involved in realistic training can show the courts, especially jurors, that all available means were utilized to train its officers. While this will not prevent a lawsuit from being brought against an agency it can show that the agency is doing everything possible to prevent improper use of force situations. When an agency shows that it is

doing everything possible to prevent these problems it can then be expected that the liability exposure will be reduced.

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## APPENDIX 1

### REALISTIC TRAINING QUESTIONNAIRE

If more space is needed, please utilize the back of this sheet or a separate sheet.

1. Has your department ever been involved in a suit based upon a training issue ?
2. What was the basis (or background) of the suit ? (You may cite the court case if applicable)
3. Was a determination made suggesting that more realistic training was needed for your department?
4. What type of realistic training, if any, do you provide officers within your department ? (i.e. Simunitions, RedMan, FATS, driving simulator, etc.)
5. If using realistic training, what benefits have been readily seen as a result of that type of training?
6. In what areas of training do you most utilize realistic training ?
7. Has the use of realistic training helped reduce the number of problem incidents that could be attributed to being caused by lack of or improper training?
8. Have you been able to document better information retention levels for persons participating in realistic training vs. standard training(i.e. regular classroom)? If so, how was this documentation accomplished?

## APPENDIX 2

Survey Results

