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**Liability Management:
Training Requirements for Tactical Teams**

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ABSTRACT

Police departments are facing increased civil litigation concerning the use of force. Due to the volatile environment in which tactical teams operate, the use of force by special weapons and tactics teams will be a critical liability area for law enforcement agencies. With the increase of civil suits against police departments, the failure of law enforcement agencies to train their special weapons and tactics teams will expose them to expensive civil litigation.

A survey of actual training hours per month of part time Texas tactical teams and a review of court decisions on civil liability for municipalities and failure to train issues was conducted. This survey was designed to determine if there are a minimum number of hours a tactical team should train to reduce civil liability in a civil suit. A review of training recommendations by the National and Texas tactical associations, the California Attorney General's SWAT Commission, and tactical team commanders was conducted to determine if a minimum number of training hours will reduce a law enforcement agency's liability during a civil suit. Although the majority of recommendations state that part time tactical teams should train a minimum of 16 hours per month, most of the tactical teams surveyed only train eight to ten hours per month.

A consensus of recommendations and current practices could not be reached to determine the minimum number of training hours per month necessary for part time tactical teams in order to reduce liability in a civil suit. Courts have stated the quality of training may be more important than the quantity. Based on court decisions, recommendations of tactical associations and current practices of Texas tactical teams,

16 training hours per month should be the goal, but eight hours of training by part time tactical teams should reduce a law enforcement agency's liability in a civil suit.

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INTRODUCTION

If it is expensive to train, try not training. In today's litigious society, this should be the mindset of law enforcement administrators. The majority of suits involving law enforcement agencies usually focus on motor vehicle pursuits and the use-of-force. Additionally, use-of-force issues are present every time a law enforcement tactical team conducts an operation. Tactical teams are not deployed, unless the possibility of an armed and dangerous suspect exists. Due to volatile situations involving the presence of numerous police weapons, the use of force by special weapons and tactics teams will always be a critical liability area for a law enforcement agency. The problem is that expensive civil suits filed against law enforcement agencies are increasing because plaintiffs claim that departments fail to train their tactical teams.

In 1978, the United States Supreme Court decided the case of *Monell vs. New York City Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018 (1978). In *Monell*, the Court decided a civil candidate could pursue a lawsuit against a governmental entity. This decision allowed civil litigants the ability to sue municipalities. Due to municipalities having more money than individual law enforcement officers, law enforcement agencies are normally the target of civil litigation. For liability to attach against a governmental entity, the claim must have resulted from a policy or custom of the government that was the "moving force" behind the violation (Savrin, 1999, p.5). In the *City of Oklahoma City vs. Tuttle*, 471 U.S. 808, 105 S.Ct. 2427 (1985), Justice Brennan stated "there may be many ways of proving the existence of a municipal policy of custom that can cause a deprivation of a constitutional right" (para. 4). One such way

attorneys prove this is showing a lack of training by a governmental entity directly linked to the issue of the litigation.

Since tactical teams deploy high levels of force in accomplishing their objectives, the failure to properly train tactical officers over use of force tactics is a highly popular way of proving vicarious liability against municipalities during civil litigation. The purpose of this research will be to examine if the failure of law enforcement agencies to train tactical teams will expose them to expensive civil litigations. The issue of failing to train a tactical team is important to special weapons and tactics team members, trainers, law enforcement administrators and taxpayers. Since the majority of law enforcement agencies utilize part time tactical teams, the research can be used to determine whether or not there is a minimum number of hours a part time tactical team should train to reduce the civil liability in a civil lawsuit.

The method of inquiry to research this issue will be to conduct a survey of tactical team supervisors who command a part time tactical team. Due to the large number of law enforcement agencies utilizing part time tactical teams, the survey will be limited to municipalities within the state of Texas. Review of case law will be conducted to determine if there are any precedents regarding failure to train issues.

It is hypothesized that this research will establish municipalities and law enforcement agencies not regularly training tactical teams have to pay substantial civil penalties for wrongful death, injury, or damage. The research findings should assist law enforcement administrators utilizing tactical teams with setting minimum training requirements to reduce civil liability and frivolous lawsuits.

REVIEW OF LITERATURE

Use of force is a major area of litigation for law enforcement agencies and has been scrutinized in the courts for years. In the last decade, civil suits against law enforcement agencies involving the actions of their special weapons and tactics teams have increased. Subsequently, the use of force by tactical teams has come under increased scrutiny by the courts and other governmental entities. Civil litigants frequently cite improper training by the tactical teams' departments, so they can also name the municipalities in the suit. Negligence torts involve unintentional acts, and many negligence torts allege improper training or supervision by the agency (Shandera, 1994). Many civil litigants pursue a negligence tort because it is easier to prove acts occurred because of negligence due to improper training than acts occurred because law enforcement officers intended to use excessive force. Shandera states, "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" (Shandera, 1994, p.4).

A civil litigant must prove the law enforcement agency knew there was a need to train the officer for his job responsibilities but they did not provide the proper training. In *City of Canton vs. Harris*, 489 U.S. 378, 109 S.Ct. 1197 (1989), the Court noted the standard of deliberate indifference can be met only when a municipality makes a conscious choice to ignore improper training of police officers.

Although it may be easier for a civil litigant to sue an agency in a negligence tort case than an intentional tort case, it is still difficult for the plaintiff to prove lack of training constituted deliberate indifference on the part of the municipality. In *Davis vs. City of North Richland Hills*, No. 04-10036, Fifth Circuit (2005), the United States Court

of Appeals for the Fifth Circuit ruled the supervisors of the North Richland Hills special weapons and tactics team were granted qualified immunity for an excessive force claim filed by the estate of Troy Davis. Qualified immunity was granted because the North Richland Hills tactical team did train and the plaintiffs could not show the training sessions were so deficient as to constitute deliberate indifference. In *Davis vs. City of North Richland Hills*, Judge Higginbotham stated, “it is not enough to say that more or different training or supervision would have prevented the result of the ill-fated raid” (p. 20).

In determining if there is a minimum number of hours a special weapons and tactics team should train to reduce civil liability, recommendations by the National and Texas tactical officers’ associations, special weapons and tactics team commanders in the State of Texas, and the California Attorney General’s Office were researched. The National Tactical Officers Association recommends 16 hours of training per month for part time tactical teams, but the association also issues a disclaimer the recommendation is not intended to set a minimum standard but should be considered a baseline upon which police agencies may build their special weapons and tactics team policies (“Suggested Swat Best Practices”, 2002). The Texas Tactical Police Officers Association recommends each agency with a tactical team have a written policy including a written standard for a minimum number of tactical training hours per month with a recommended minimum of 16 hours each month for part time teams (“Suggested SWAT Best Practices”, 2005).

In a SWAT training management research paper, Evans attempted to conduct a survey of 50 part time tactical team commanders in the State of Texas. Evans (2004),

stated that 22 commanders responded to his survey and the majority of them recommended a minimum of 16 hours training per month based upon their experience and knowledge of SWAT operations. Although the majority of the tactical team commanders recommended training a minimum of 16 hours per month, the majority of the units (45%) only trained eight hours per month with the other tactical units training 10, 12, or 16 hours per month (Evans, 2004).

The California Attorney General's Commission on Special Weapons and Tactics proposed 5% of a tactical team's on-duty time should be devoted to training (Commission on Special Weapons and Tactics, 2002). Based upon the recommendation by the California Attorney General's Commission, a minimum of eight hours per month should be spent training for part time tactical teams since the majority of law enforcement officers work approximately 160 hours per month.

Although the majority of tactical associations and commanders of special weapons and tactics teams recommend a minimum of 16 hours per month of training, it has even been suggested 24 hours to 40 hours a month should be spent for advanced training purposes (Mijares, McCarthy, & Perkins, 2000). Three to five days of training would be considered ideal, but this amount is unrealistic for most departments. A more practical suggestion is law enforcement agencies should offer training to their tactical personnel which goes beyond the bare essentials suitable for a patrol officer (Mijares, et al., 2000).

Many different minimum standards have been suggested for the training of tactical team officers. The least amount of training suggested was a minimum of eight hours per month by the California Attorney General's Commission. Although the

majority of tactical team commanders recommended a minimum of 16 hours per month of training, the reality was most special weapons and tactics team in Texas only trained about eight hours per month. The trend for tactical team training appears to be a minimum of 16 hours per month. The National Tactical Officers Association and the Texas Tactical Police Officers Association recommend a minimum of 16 hours per month of training, but they also state this is just a recommended goal for which agencies should strive and not an issued standard. Although the recommended training hours per month may differ from eight hours to 40 hours, the need for tactical team members to train above the basic requirements for a patrol officer was constant.

METHODOLOGY

The majority of civil suits involving the issue of use-of-force by tactical teams are filed as negligence torts, so the plaintiffs can include the municipalities. Failure to train law enforcement personnel is often cited by a plaintiff as an avenue to prove a duty by the law enforcement agency was not performed and resulted in the violation of a constitutional right. This research can be used to determine if there are a minimum number of hours a part time special weapons and tactics team should train to reduce liability in a civil suit.

Since laws are constantly changing and court decisions are often overturned, proposing a specific minimum number of training hours per month for a tactical team does not mean an agency will never be sued or the courts will always judge in favor of the municipality. This author, however, suggests a minimum number of training hours per month will reduce the liability of a law enforcement agency in a civil suit.

Research will be conducted by reviewing the training recommendations of the National and Texas tactical associations, the California Attorney General's SWAT Commission, and tactical team commanders. Court decisions on civil liability for municipalities and failure to train issues will also be reviewed. A survey of actual training hours per month of tactical teams in Texas will also be conducted.

A survey will be electronically mailed to 146 Texas law enforcement agencies. The survey will identify which agencies presently use tactical teams. If an agency has a special weapons and tactics team, the survey will identify the part time teams and examine how many hours per month the tactical team is trained. The response rate to the survey was 25 percent. The survey will be used to determine the number of hours per month the majority of part time tactical teams train and further establish a minimum number of hours per month a part time tactical team should train in order to reduce civil liability.

It is hypothesized that municipalities will be liable in civil suits if they fail to provide advanced specialized training for their law enforcement agencies' part time tactical teams. A minimum number of training hours per month by part time tactical teams will also be determined based upon the data obtained by the research material and the results of the survey.

FINDINGS

The research focused on civil liability for tactical team members, trainers, and supervisors of law enforcement agencies with part time tactical teams. Court cases were reviewed to determine the types of civil suits filed in response to actions by special weapons and tactics teams. The recommendations of tactical associations, special

weapons and tactics commissions, and tactical commanders were researched, and a survey was conducted to determine the actual training hours per month by part time tactical teams in the state of Texas.

Review of court cases determined negligence torts were the most popular tort cases pursued by civil litigants. In a negligence tort, the plaintiff only has to prove the law enforcement agency should have known there was a need for training but failed to provide this training. The plaintiff has to prove the officers intended to violate a person's constitutional rights in an intentional tort case. Not only is the burden of proof easier in a negligence tort case, the plaintiff can also file against the municipality. The plaintiff has an improved chance of getting a larger settlement against a municipality than a law enforcement officer. In a negligence tort case, the plaintiff is required to prove deliberate indifference by the law enforcement agency. The courts have defined deliberate indifference as an agency knowing there was a need for training but failing to provide the necessary training. It is not enough for the plaintiff to state the tactical team needed more or different training, he must prove the training sessions were deficient (Davis vs. City of North Richland Hills, 2005).

The National Tactical Officers Association and the Texas Tactical Police Officers Association both recommend 16 hours training per month of part time tactical teams. Both associations state 16 hours training per month will ensure a part time special weapons and tactics team will be ready for any operation. The National Tactical Officers Association also issues a disclaimer with their recommendation. The National Tactical Officers Association warns the recommended training hours per month should only serve as a baseline for which tactical teams should build their policies and is not an

issued standard. The time and budget restraints of law enforcement agencies should also be considered when developing training schedules for tactical teams, and the recommended training hours per month should be a goal for which agencies constantly strive.

Following the suggested SWAT practices issued by the National Tactical Officers Association and the Texas Tactical Police Officers Association, many special weapons and tactics team commanders in the state of Texas also recommend 16 training hours per month for part time tactical teams. Although tactical team commanders recommend more training, many Texas tactical teams train less than 16 hours per month. In a survey of 22 special weapons and tactics team commanders in the state of Texas, only 31 percent actually trained 16 hours per month with 45 percent of the tactical teams only training eight hours per month (Evans, 2004).

A special commission by the California Attorney General recommended part time tactical teams train at least five percent of their on duty time (Commission on Special Weapons and Tactics, 2002). Based upon an 80-hour bi-weekly schedule worked by most police officers in Texas, this translates to eight hours of training per month. Ex-Los Angeles Police Department tactical sergeant Ron McCarthy, along with two criminal justice professors from the Southwest Texas State University, recommends tactical teams train 24 hours to 40 hours per month.

Building upon the material researched, a survey of Texas law enforcement agencies was conducted to determine how many hours per month each part time tactical team trained. Responses from 17 law enforcement agencies stated part time special weapons and tactics teams were utilized within their department (Figure 1).

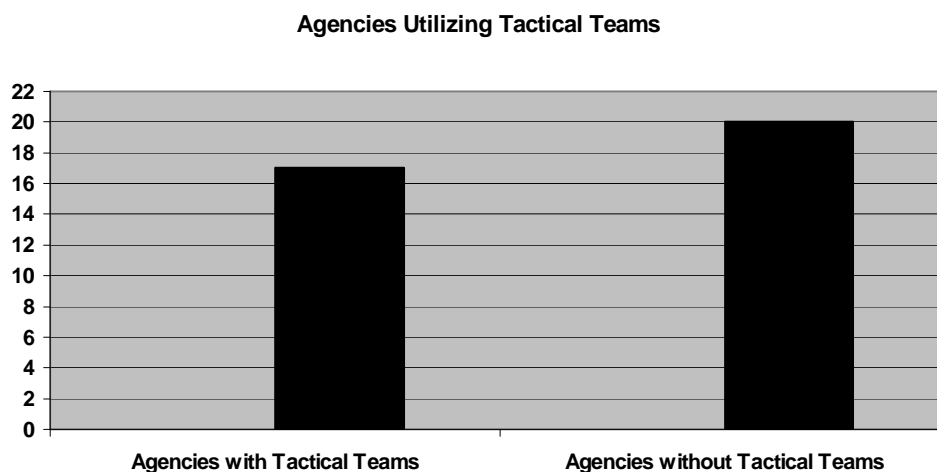


Figure 1

Law enforcement agencies employing part time tactical teams were asked to identify how many hours per month the teams trained and if their municipalities had ever been the defendants in civil lawsuits involving an incident with their special weapons and tactics teams. The majority of the tactical teams train 16 hours per month (47 percent), but this is only slightly higher than the number of tactical teams training eight hours per month (35 percent). The remaining tactical teams train 10 hours per month (Figure 2). Five of the law enforcement agencies (29 percent) responded being involved in a civil suit arising from actions of tactical teams (Figure 3).

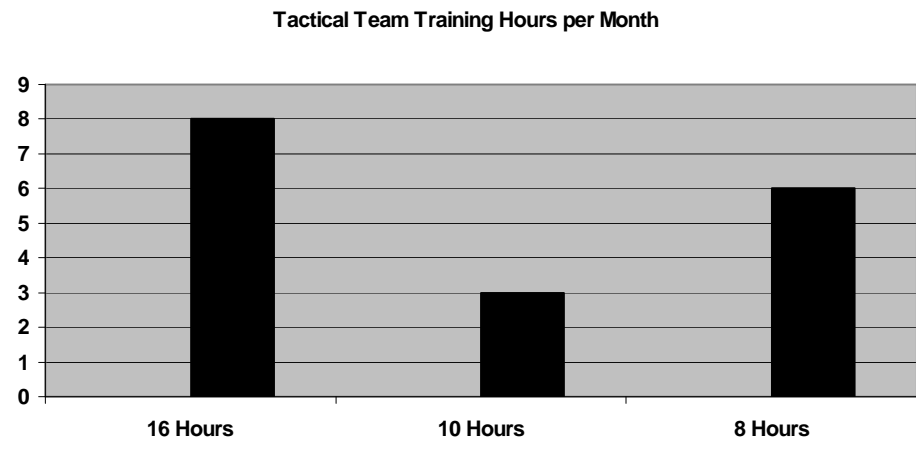


Figure 2

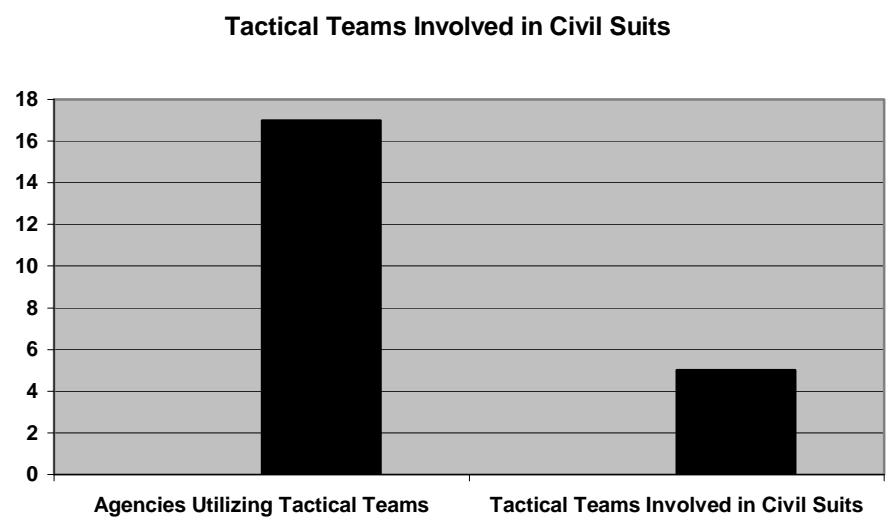


Figure 3

The research shows several different recommendations on how many hours per month a part time tactical team should train. The majority of material researched recommends teams training 16 hours per month, but the research also shows less than half of the tactical teams surveyed train fewer than 16 hours per month. The number of tactical teams training 8 hours per month is nearly equal to the number of teams training

16 hours per month. Although different hours per month were recommended for training, the majority of the material researched stated special weapons and tactics teams should train for all possible operations even if they are unable to train as frequently as recommended.

CONCLUSIONS

Many Texas law enforcement agencies utilize part time tactical teams. Tactical operations are conducted in high-risk situations; therefore, the overwhelming show or use of force can often lead to civil suits. Although law enforcement agencies have little control over being sued, every department can increase their chances of successfully defending themselves during civil litigation. This research was conducted to determine if a minimum number of training hours per month could reduce a municipality's civil liability in a lawsuit. It was hypothesized that law enforcement agencies will be civilly liable for failing to train their part time tactical teams and a minimum number of training hours per month can be determined to reduce liability in a civil suit.

All of the research supports the hypothesis law enforcement agencies will face expensive judgments in a civil suit if they do not train tactical teams for all of the foreseeable incidents encountered when conducting a special weapons and tactics operation. Courts have stressed municipalities will be civilly liable if they should foresee a need exists for training but do not provide the necessary training. The research material and tactical team commanders surveyed gave several different recommendations for hours per month needed for tactical team training, but all stressed tactical teams should receive specialized training or they could face expensive civil litigation.

Research material proposes several different recommendations for the minimum number of hours a tactical team should train each month. The majority of the recommendations suggest special weapons and tactics teams should train for 16 hours per month. Many of these recommendations also disclaim 16 hours a month is an issued standard but instead a goal for which tactical teams should strive. Due to budgetary constraints, manpower issues, and time constraints, many law enforcement agencies are unable to provide 16 hours per month for tactical teams to train. Some research suggests a minimum of eight hours per month should be the minimum training standard for tactical teams, and many Texas tactical teams only train eight hours per month. Based on conflicting recommendations, court cases, and realistic tactical team training frequency, this research suggests 16 hours of training per month should be the goal of every tactical team, but a minimum of eight hours of training per month is necessary to reduce a law enforcement agency's liability in a civil suit. The research suggests the quality of training is more valuable than the frequency of training in defending a tactical team's actions during civil litigation.

Several issues arose which limited the depth of this research. The survey was electronically mailed to 146 agencies with a follow up request electronically mailed to those law enforcement agencies that did not respond, but only 25 percent of the surveys were returned. The responding agencies provided a large sampling of law enforcement agencies throughout Texas, however, so the integrity of the research was not seriously limited. Many court cases involving failure to train exist, but very few cases involve tactical teams. All of the research supported specialized training

for tactical teams, but there were many different recommendations for how many hours per month a tactical team should train.

This research is valuable to tactical team members, trainers, supervisors, municipalities, and the citizens served by law enforcement agencies. Failure to train members of special weapons and tactics teams results in a significant possibility municipalities will face expensive civil judgments. The research supports continuing specialized training of special weapons and tactics teams will reduce agencies' civil liability. Although the material researched could not provide a definitive minimum number of training hours per month, the research does suggest eight hours is the least amount of training per month defensible in a civil suit based upon the minimum training time suggested as well as common practice in many Texas law enforcement agencies. Tactical team members, trainers and supervisors can use this study to ensure law enforcement agencies are providing the necessary training for their specialized weapons and tactics teams to protect the agencies against expensive civil litigation.

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