Police Liability for Failure to Train

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On May 12, 1991, an inexperienced, untrained reserve sheriff's deputy stopped a vehicle after the driver turned around to avoid a roadblock. On the dark country road, the deputy extracted the driver's wife (who offered no resistance) using an arm-bar technique. The woman suffered severe injuries to her knees. The deputy had never taken a law enforcement course and in just a few weeks on the job had effected an excessive number of take-down arrests.[1]

The U.S. Supreme Court recently considered the negligent hiring claim filed by the plaintiff in the case, known as *Brown v. Bryan County*. On April 30, 2001, the U.S. Supreme Court declined to hear the county's appeal concerning municipal liability for failure to train, allowing the opinion of the U.S. Court of Appeals for the Fifth Circuit to stand.

The Fifth Circuit held that the county was liable because a reasonable jury could conclude (1) that it should have been obvious to the sheriff that not training the deputy would result in his applying force that would jeopardize citizens' Fourth Amendment rights and (2) that this failure was the "moving force" that caused the constitutional injury.[2] The court concluded that the failure to train one officer adequately, and evidence of a causal connection between that lack of training and the injury, may create municipal liability under Section 1983.

Courts have traditionally considered several factors in determining whether a municipality is liable for failure to train under 42 U.S.C. Section 1983, the federal civil rights statute. In a civil suit alleging failure to train, the plaintiff has the burden of proving three elements: (1) the training program is inadequate for the tasks that officers perform; (2) the inadequacy of training is a result of the city's deliberate indifference; and (3) the inadequacy is closely related to or caused the plaintiff's injury.[3] Furthermore, the plaintiff must prove that the incident is a usual and recurring situation in the municipality. Only then is the municipality put on notice of the need for more adequate training.[4] But in *Brown v. Bryan County* the court held that a municipality may be liable for the inadequate training and misconduct of just one officer.

In *Brown v. Gray*, an off-duty plainclothes officer shot and severely injured the plaintiff following a traffic dispute.[5] The plaintiff filed a claim under 42 U.S.C. Section 1983 against the City of Denver. The jury found that the shooting was directly related to the officer's position as a police officer and that the police department had failed to train him on the always-armed/always-on duty policy. Consequently, the appellate court upheld the verdict against the city, finding that the plaintiff presented sufficient evidence of all three prongs of the test.

Similarly, in *Echlin v. City of Lansing* a U.S. district court found a municipality liable for failure to train under Section 1983 after an accidental discharge during a reverse-buy drug bust.[6] During the bust, an officer's weapon, an MP-5 machine gun, slipped from his grasp. When the officer caught the weapon, his finger engaged the trigger and the weapon discharged a single round, injuring the plaintiff. The Lansing, Michigan, Police Department Review Board identified necessary changes to department policies and procedures, including changing the straps on the MP-5 to accommodate both right- and left-hand shooters. The plaintiff filed a lawsuit against the municipality, claiming failure to train.

The court concluded that the city's policy was to arm START team members with MP-5 submachine guns, even when that force would be excessive. Additionally, the city was aware that the officers were having difficulties with the weapons. The court found that the lack of training was so obvious that it showed "deliberate indifference."[7] The court allowed the case to go to trial.

Failure-to-train claims do not always result from outrageous behavior. Any misstep by an officer that results in injury may lead to a failure-to-train claim. To avoid lawsuits based on these claims, managers must develop a training curriculum that involves every aspect of policing and carefully document the training of all officers. They also must assess the training by testing officers afterwards or by monitoring in-the-field performance evaluations. Lastly, police managers must identify performance problems and address them promptly. Refresher training is a good preventative measure.

Once an incident has occurred, other remedial steps may be appropriate. First, the internal investigation must be accurate and thorough. However, while conducting the internal investigation, the manager must be mindful that its findings may be used against the municipality as an admission. The internal investigation may spawn policy changes, but the policy changes may be used as evidence that the prior policy or practice showed deliberate indifference. Secondly, the department must take prompt and appropriate discipline as appropriate. ❖

[1] *Brown v. Bryan*, 219 F.3d 450 (5th Cir. 2000).
[2] *Id.* at 461.
[3] *Johnston v. Cincinnati*, 39 F. Supp. 1013 (S.D. Ohio 1999).
[4] *Brown v. Gray*, 227 F.3d 1278 (10th Cir. 2000).
[5] *Id.*
[6] *Echlin v. City of Lansing*, 1997 U.S. Dist. LEXIS 1943 (W.D. Michigan 1997).
[7] *Id.* at 22.