

A Comprehensive Approach to Reducing Civil Liability in Use of Force Incidents: A Review of
Current Practices and Policy Recommendations

A Seminar Paper

Presented to the Graduate Faculty

University of Wisconsin – Platteville

In Partial Fulfillment of the

Requirements for the Degree

Master of Science in Criminal Justice Administration

Mark Poffenberger

May 2014

Acknowledgements

Obtaining a master's degree is not something I thought I would have accomplished fifteen years ago. Through many long hours of hard work during the past two and a half years I have been able to accomplish this goal. I have many people to thank that have supported me during this process. I would like to thank my family for supporting me and sacrificing their time with me so that I could attain this degree. I would like to thank my friends and co-workers who have encouraged and supported me to complete this degree. I would like to thank the numerous professors at the University of Wisconsin-Platteville who have provided their knowledge, insight, and guidance during the courses I have taken in this program. Finally, I would like to thank my advisor, Dr. Susan Hilal, for taking the time to work with me during this process and providing direction for this paper as it was needed. I wish you continued success and hope you are able to assist many other students in reaching their goals.

Abstract

A Comprehensive Approach to Reducing Civil Liability in Use of Force Incidents: A Review of Current Practices and Policy Recommendations

Mark Poffenberger

Under the Supervision of Dr. Susan Hilal

Statement of the Problem

Over the course of the previous century America has become a very litigious society and lawsuits span across the professional spectrum. Typically, the greatest area of civil liability exposure to law enforcement agencies and police officers pertains to excessive use of force. An important approach to limit civil liability is to identify and review areas that impact law enforcement such as training, supervision, and oversight. By identifying these areas and researching the strengths and weaknesses of the programs used law enforcement agencies can develop a comprehensive approach to addressing civil liability concerns. This approach should recognize the need to fill police ranks with highly trained officers, supervisors with effective mechanisms that can quickly identify and discipline problem officers, and transparent review processes that ensures public satisfaction with professional police services.

Method of Approach

The primary method of approach for this research is to review and analyze related secondary data obtained from empirical and statistical research. This information includes sources from scholarly journal, government websites, and related texts. Additionally, current training information and oversight practices of law enforcement agencies are reviewed and analyzed with and emphasis on standards in the state of Wisconsin as well as large metropolitan

departments across the country.. From these findings a comprehensive recommendation is developed that is focused on reducing civil liability opportunities in the professional law enforcement arena and citizen unrest regarding police use of force.

Results of Study

Civil liability is a major concern to law enforcement agencies. Empirical data and related texts indicate that policy and training standards have improved over time. Early Warning Systems have been effective in reducing citizen complaints and potential for civil liability. New discipline approaches may be effective in developing consistent and fair responses to discipline while increasing morale and holding officers accountable. Research has not indicated citizen oversight models sustain citizen complaints at a higher rate, but do establish transparency in use of force reviews. The research also shows that implementing technology can have a positive effect on reducing civil liability. The research has shown strengths to each program that when combined should reduce civil liability in use of force incidents.

TABLE OF CONTENTS

	Page
APPROVAL PAGE	i
TITLE PAGE	ii
ACKNOWLEDGEMENTS	iii
ABSTRACT	iv
TABLE OF CONTENTS	v
SECTIONS:	
I. INTRODUCTTION	
A. Statement of the Problem	1
B. Purpose of Paper	3
C. Method of Approach	3
II. LITERATURE REVIEW	
A. Use of force and legal review	4
1. Use of force concepts	4
2. Intervention options	6
3. Legal Review	8
B. Policy and Training	11
1. Official policy in use of force	11
2. Use of force training	14
C. Early Warning Systems and Discipline	17
1. Early Warning Systems	17
2. Officer Discipline	21
D. Police use of force reviews and oversight models	25
1. Internal reviews	26

2. External reviews	29
3. Citizen review boards	30
III. MODEL PROGRAMS AND RECOMMENDATIONS	
A. Ethics	33
B. Recruitment	35
C. Mentoring Programs	36
D. Policy	36
E. Training	37
F. Early Warning Systems	37
G. Officer Discipline	38
H. Use of Force Review Models	39
I. Technology	39
VI. SUMMARY AND CONCLUSIONS	42
REFERENCES	46

SECTION I. INTRODUCTION: A comprehensive approach to reducing civil liability in use of force incidents: A review of current practices and policy recommendations

Statement of the Problem

Never before has law enforcement in the United States been more scrutinized than it is today. Many factors have contributed to this current state, including the evolution of law, legal recourse, media scrutiny, and public outcry. Police use of force incidents are often highly covered by the media for public consumption, which has resulted in negative public attitudes towards law enforcement regarding how police use force. Police use of force incidents have also resulted in thousands of lawsuits against law enforcement agencies for allegations of excessive use of force, which has placed additional financial pressure on local municipalities that are already facing budget shortfalls and decreases in funding. One of the effects of this evolution has been the need for constant evaluation and change by law enforcement agencies and personal who are charged with enforcing federal, state, and local laws regarding police use of force incidents.

Police officers have the legal right to use force under certain circumstances. However, this right shall not be abused or excessive in nature. In 1989 the U.S. Supreme Court concluded in *Graham v. Connor* that the use of force by law enforcement officers against subjects constituted a seizure, which according to the 4th Amendment of the U.S. Constitution had to be reasonable in nature. The Court also outlined the issues that needed to be considered when deciding if a certain use of force is reasonable and included the seriousness of the alleged crime, the imminent threat the suspect poses to officers and others, and if the suspect is actively resisting or attempting to flee. These issues have provided the basis for much civil litigation against law enforcement officers and agencies.

The Civil Rights Act of 1871 provides the basis from which many civil litigation suits have been brought against the police and the number of civil lawsuits against police officers has skyrocketed since the 1960's. This trend continues today as the New York Daily News (2012) reports that between July 1st, 2010 and June 30th, 2011 there were 8,882 lawsuits filed against the New York Police Department. The costs associated with financial payouts awarded to petitioners against law enforcement agencies have also increased and can be crippling to governing bodies. The New York Daily News (2012) reports that the cost of police liability to the City of New York in the 2011 fiscal year was \$185.6 million. Similar trends have been seen in other cities across the country. NBC Chicago (2012) reports that from January 2009 to November 2011 there were 441 civil lawsuits against the Chicago Police Department that led to financial payouts by the city. From these settlements and judgments the city of Chicago paid out more than \$45 million in damages during this span. To be certain, these costs alone can be staggering. Additionally, costs can also result when citizens riot in protest of police actions, such as LA riots resulting from the Rodney King beating in 1991.

Archibold and Maguire (2002) observe civil liability issues has affected both the manner in which the individual officers goes about their job and the manner in which police administrators train and supervise their officers. It has forced administrators to create policies and procedures to limit financial liability to already cash strapped operating budgets. These issues have also called into question the transparency and fairness of how police use of force incidents are investigated and how officers are disciplined. The entire process continues to be highly scrutinized and evaluated by administrators for its efficiency and effectiveness.

Purpose of the Paper

Police use of force complaints and subsequent lawsuits against the police is a legitimate concern for all law enforcement agencies. To reduce the number of civil lawsuits against the police and general mistrust by the community, law enforcement training and practices regarding police use of force must be reviewed for their ability to properly train law enforcement officers and reduce police liability. The purpose of this paper is to review current practices used by law enforcement agencies and identify areas of weakness and strength. By doing so, a comprehensive recommendation can be made to improve what processes are used and how improvements can be made in reducing police liability while improving community relations.

Method of Approach

Specifically, this paper will review and identify strengths and weaknesses in the following important areas regarding police use of force: (1) police training, (2), police policy, (3), early warning/intervention systems, (4) police oversight models, and (5) officer discipline. The primary method of approach will be conducted by reviewing and analyzing related secondary data obtained from empirical and statistical research. This will consist of sources including scholarly journals, government websites, and related texts. Current training and oversight practices will also be reviewed for their strengths and weaknesses focusing on the state of Wisconsin as well as larger metropolitan police departments across the country. This paper will then recommend a comprehensive approach based upon the review of current practices and how law enforcement agencies can reduce liability as well as provide an outline of an evaluation model that can measure the ability of these recommendations to reduce police liability.

SECTION II: LITERATURE REVIEW

The following literature review will be divided into four sections. The first section will begin with a review of use of force concepts and a related legal review. The legal review will include the progressive state of civil lawsuits against the police in the United States as well as pertinent use of force court decisions. Second, training models and standards will be reviewed for their strengths and weaknesses as well as reviewing use of force policies. Thirdly, the strengths and weaknesses of early warning systems and officer discipline will be discussed. Finally, police use of force review and oversight models will be reviewed and analyzed for the strengths and weaknesses of each.

Use of Force Concepts and Legal Review

Use of Force Concepts

To the average citizen the definition of police use of force may be an ambiguous term. This can be complicated when trying to interpret what a citizen may actually see when they witness a police officer using force during the course of their duties. Therefore, it is important to define these terms so it can be clear what the use of force entails and what thresholds need to be met in order to deploy any particular use of force option. In the state of Wisconsin these concepts and deployment options can be found in the Wisconsin Defensive and Arrest Tactics or DAAT manual.

According to the Wisconsin DAAT manual (2007) police officers may use force in order to gain control over subjects when they are making lawful arrest, detaining subjects suspected of criminal behavior, controlling resistive subjects, defending themselves or others, and to prevent the suspect from escaping. However, with any concept there is much debate over how much force is needed to exact an arrest and whether the actions on the part of the law enforcement

officer are justified. All law enforcement officers in the state of Wisconsin are trained using the same DAAT manual. The current manual was approved in March of 2002 and was revised in March of 2007.

According to The DAAT manual (2007) the Disturbance Resolution Model was created to provide law enforcement officers with a model on how to respond to situations that may require the law enforcement officer to use force. The current outline consists of three main components. The first component is approach considerations, which require the officer to conduct a tactical evaluation of the potential hazards involved and the tactical deployment of the resources available to the officer at the time of action. The second component consists of intervention options, which outlines the various tactical approaches, techniques, and tools available to the officer in order to achieve compliance from a resistive subject and effectively take a subject in physical custody. The third component consists of follow-through considerations that the officers needs to take, such as stabilizing and transporting a subject, after using force. While all three components present the potential for police liability, the greatest exposure to civil liability is presented when the officer deploys an intervention option. As is such, intervention options requires further explanation.

The DAAT manual (2007) states that law enforcement officers are authorized to use any level of force that is reasonably necessary to gain compliance from a resistive subject. Intervention options consist of five categories and include: presence, dialogue, control alternatives, protective alternatives, and deadly force. Officers in Wisconsin are trained in accordance with the US Supreme Court's decision in *Graham v. Connor* in that the amount of force used by police officers must be objectionably reasonable given the specific circumstances that are present. The intervention options listed above that are available to the officer allow them

to choose the appropriate mode that is necessary to achieve compliance in any given situation. While it is preferable that a police officer uses the least amount of force needed to control a subject the officer may escalate to any intervention option that is necessary to stop a threat and/or take a resistive subject into custody.

Intervention Options

When explaining each intervention option it is important to understand that this is not a use of force continuum. Any intervention option may be used as the situation warrants and the police officer may jump from a minimal level of force to deadly force without using the other intervention options. The most minimal use of force intervention option is presence. Presence consists of the police officer displaying a presence of authority that is visible to the potentially dangerous subject. It can also include tactical positioning and stances to give a visible display of authority to the suspect.

Presence is followed by dialogue given by the officer to control a subject. Dialogue can start with non-threatening conversation that can be increased if necessary to heavy control talk. Heavy control talk involves loud commands given by the officer to gain compliance from the subject. Control alternatives are the next intervention option. Control alternatives are used to overcome passive and actively resistive subjects. Control alternatives consist of escort and compliance holds, the application of pressure points, and control devices such as OC spray and tasers. When control alternative are ineffective protective alternatives can be used to overcome continued resistance and assaultive behavior. This intervention option includes focused strikes using hands, elbows, knees, and feet and can also incorporate the use of the baton through a variety of techniques. Handcuffs can be used in unison with any intervention option when it is the officer's intent to take a subject into physical custody.

The final intervention option is the use of deadly force that is used to stop the threat to a law enforcement officer. The DAAT manual defines deadly force as “The intentional use of a firearm or other instrument, the use of which would result in a high probability of death (DAAT manual, 2007, p. 68). The use of deadly force is justified if the officers believes the behavior by the subject has caused or imminently threatens to cause death or great bodily harm to him/her or another person or persons (DAAT manual, 2007, p. 69). In order for a threat to be imminent a subject must have intent to cause great bodily harm or death, a weapon that is capable of causing great bodily harm or death, and the delivery system to cause such harm such as close proximity to the officer or other potential victims. A police officer is also required to acquire their target, identify their target, and isolate their target prior to delivering deadly force options.

The Supreme Court in *Graham v. Connor (1989)* ruled that the level of force that may be used by law enforcement officers must be objectionably reasonable given the circumstances. With this in mind it is important to consider other factors that are used to determine what type of force or intervention a police officer may choose to use. These factors can include but are not limited to: age difference between the officer and subject, differences in size, strength, and skill level, an officer’s reasonable perception of the threat, previous knowledge of combative subjects, injury or exhaustion to the officer, availability of backup, sudden assaults by the subject, and any other special circumstance that may affect the decisions made by the officer.

Each state in the United States adopts laws granting the authority for law enforcement officers to use force. According to the California Commission on Peace Officer Standards and Training Manual (2007) this authority is granted to peace officers in California under Penal Code Section 835a. Penal Code Section 835a states officers may use force to overcome resistance or to prevent escape when they have reasonable cause that the person may be arrested for a criminal

offense. While each state code may be somewhat different they all must meet federal standards and comply with the protections granted in the Bill of Rights and subsequent U.S. Supreme Court decisions. However, states and more specifically any law enforcement agency may be more restrictive in nature and limit the actions of law enforcement officers. According to the National Institute of Justice (2014) most agencies have their own use of force policy that generally includes some type of use of force continuum or intervention options that are used in the state of Wisconsin.

Legal Review

There have been many landmark cases that have affected not only how law enforcement officers use force, but also how individuals may proceed with civil lawsuits against the police. While it is impossible to cover all such cases it is important to review several of them to see the impact they have had on law enforcement procedures and training standard aimed at minimizing the potential of civil lawsuits and monetary damages awarded to petitions against police officers who were not acting under color of the law. Such cases are constantly being presented to the courts and require law enforcement agencies to remain vigilant and educated on judicial holdings to ensure that their police officers are acting in accordance with the law. Updates can be given to police officers in a variety of ways such as training memos, emails, yearly in-service training, or informing the officer during roll call of significant changes.

The Constitution of the United States of America was created in order to establish a government of this country and to delegate to the federal government's limited powers. It is under this document that the United States has operated since it was ratified in 1788. Of particular interest to those in the field of law enforcement and criminal justice is the Bill of Rights, which was ratified in 1791. It is here where individual protections are defined and

provide the rationale behind many criminal and civil rights violation decisions. Specifically, the Fourth, Fifth, and Sixth Amendments define Constitutional protections of interest to those accused of violating the law.

The 4th Amendment to the U.S. Constitution states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures....” It is violations of this amendment that has provided the foundation for many civil lawsuits against law enforcement agencies and their employees. Much focus on this amendment has been on whether or not a search or seizure is reasonable or unreasonable. As previously noted, the U.S. Supreme Court has addressed this issue in *Graham v. Connor (1989)* and stated the main issue that needs to be considered is whether or not the force used was objectionably reasonable under the given circumstances.

While the Bill of Rights ensures certain individual protections under the U.S. Constitution there has no doubt been clear violations of those rights and many circumstances where the legality of government actions have been questioned. It is important to protect civil liberties and hold government officials accountable for their actions. The Civil Rights Act of 1891 has provided the foundation for redress and was created to protect those in the south who were prone to civil rights violations by those in official capacities. Means to address civil rights violations was established by codifying 42 U.S.C. Section 1983. Under this United States Code every person, who under color of any statute or causes any citizen in the U.S. the deprivation of any right, privilege, or immunities that are defined and established in the U.S. Constitution, can be held liable to the person they injured or who’s rights they violated.

Prior to the 1960’s civil litigation and redress has been relatively unused. Since then, the courts have handed down decisions in *Monroe v. Pape (1961)* and *Monell v. Department of*

Social Services (1978) that have been extremely important to reversing this trend. Collins (2011) asserts the Supreme Court held in *Monroe v. Pape* that if an individual's Constitutional Rights have been violated and a party was injured based on the actions of police officers that the injured party had the right to sue the officers for damages in civil court. While this decision protected the municipalities that employed these officers that protection was later rescinded in the Monell decision. *Monell v. Department of Social Services* held that municipalities could be held liable for the acts of police officers working for the municipality if the acts resulted from official policy or the practices and customs of the organization. It is in these cases that the foundation was laid for civil litigation against law enforcement agencies and their respective organizations.

There have been several landmark cases in which the decision handed down by the court has greatly affected the manner in which law enforcement officers use force and how they are trained. In *Tennessee v. Garner (1985)* a Memphis police officer shot and killed a suspect as he was fleeing over a fence after committing a burglary. The suspect was believed to be unarmed, but the police officer killed the suspect in accordance with a Tennessee statute that allowed officers to use all the necessary means to arrest a suspect who is fleeing or forcibly resisting. The Court held that the use of deadly force is a seizure and must meet the reasonableness standard of the Fourth Amendment. In this case, it was decided that deadly force could not be used unless to prevent escape and the officer believes the fleeing suspect is an immediate danger or threat to seriously injure the officer or others. Therefore, the Tennessee statute was considered to be unconstitutional in regards to its definition and authorization of deadly force.

Similarly, other cases such as *Brower v. County of Inyo (1989)* have relied on the reasonableness standard when it comes to seizing a suspect and using any type of force. In this case Brower was fleeing police officers in a stolen auto and was killed when police officers

established a roadblock with an 18-wheeler semi trailer that was strategically placed behind a curve without any lights. The Court ruled that the nature of the roadblock was unreasonable in that it did not offer Brower the chance to decide to stop and give up. While many other cases could be cited it is important to acknowledge not only the need to be reasonable in the application of force, but the impact these numerous cases have had on official policies of law enforcement agencies and training of police officers.

Official Policy and Training in Police Use of Force

Official Policy

It is policies and procedures that provide employees the foundation to implement action that is geared towards meeting organizational goals. Every policy should state the purpose of the policy, action to be taken, and the rational basis for the purpose of the policy. It is incumbent on law enforcement agencies to not only develop well-defined policies and procedures, but also to provide law enforcement officers adequate training to ensure they have the ability to meet the requirements of such. While policies and procedures may not encompass every possible scenario that law enforcement officers may find themselves dealing with every day, it does provide a fundamental framework and serves as a guideline for law enforcement officers. Officers can refer to policy when deciding what course of action to take in use of force scenarios and correct decisions can reduce the potential of civil liability.

Griffin and Moorhead (2012) assert that having rules and procedures can be extremely effective in ensuring order and predictability among employees of an organization as they carry out their defined tasks. The authors reference Weber's early 1900's ideal bureaucracy model where hierarchy authority establishes the rules and procedures for line workers to follow. This concept can be applied to law enforcement agencies and a well written policy pertaining to

police use of force can greatly reduce the civil liability exposure a law enforcement agency faces on a daily basis by ensuring that officers who may have to use force on a daily basis are doing so within the framework of the use of force policy and in accordance with state and federal law.

It is also important to note the need for strong management and leadership throughout an organization to implement and enforce use of force policies. Ortmeier and Meese (2010) contend that when utilized properly, management will successfully direct people towards organizational goals. Management also brings order and consistency to organizations by effectively organizing, planning, and controlling employee behavior. Controlling and eradicating undesired behavior can greatly reduce the amount of liability law enforcement agencies may face from police officers acting contrary to established policies and procedures of the department. There are several approaches to controlling behavior in law enforcement agencies, such as early warning systems and discipline that will later be discussed in detail.

There are several policies that are mandated by state law in Wisconsin that require each administrator that is in charge of a law enforcement agency to write and implement into their respective agency's operational picture. Some of the mandated policies that law enforcement agencies are required to develop in Wisconsin are citizen complaint procedures, open records, domestic abuse, high speed pursuits, and use of force. According to Wilenet (2014), §66.0511(2) requires the mandatory development and implementation of a use of force policy by law enforcement agencies, which regulates the use of force by police officers used during the course of their duties. The International Association of Chiefs of Police (2006) recommends that this policy should meet state and federal requirements and any limitations on the use of force. It should be noted that policies that are developed in use of force by each law enforcement agency could place greater restrictions on law enforcement officers they employ. According to the

Wisconsin State Legislature (2014) §66.312 assures that any officer who is performing their duties and applies force within the guidelines of policy are protected against individual liability.

Many other states across the country have adopted statutes, which require law enforcement agencies to develop and implement use of force policies. The Minnesota Board of Peace Officer Standards and Training (2014) indicates Minnesota is such a state and the chief law enforcement officer of each agency must establish and enforce a written use of force policy under Minnesota §626.8452(1). These statutes also typically require yearly law enforcement training in use of force concepts as well as the documentation of such training. Therefore, these state mandated policies can be effective in ensuring policies are enacted and enforced with the hopes of reducing the potential of civil liability in use of force situations.

The IACP (2006) has made several recommendations with the intent of developing ideal use of force policies. First, there must be a written policy that informs the officer of the limitations when using force. These policies should be short and concise in order to allow the officer to recall use of force principles quickly. Second, deadly force and other use of force concepts should be clearly defined. Law enforcement agencies should consider developing separate policies for non-deadly use of force and deadly use of force. Non-deadly use of force policies can also be tailored to meet the needs of each department and the equipment that their officers carry. Thirdly, use of force policies need to meet state and federal requirements to ensure civil rights will not be violated. Finally, training and use of force reporting need to be addressed within these policies. While use of force policies should be short and concise, training and reporting processes can be addressed at length during specialized training and other department policies.

Training

According to the IACP (2006) having established policies and procedures within a law enforcement agency can have little impact without ensuring that officers are properly trained and command officers who ensure that officers are acting in compliance with established policies and procedures. Additionally, the U.S. Supreme Court noted in *City of Canton v. Harris 1989* that the failure to train law enforcement officers in essential functions of their jobs may result in civil liability against municipalities for acts of police officers violating constitutional protection rights of citizens. Therefore, it is imperative that law enforcement officers are adequately trained to perform their duties, especially in use of force concepts and tactics.

Ortmeier and Meese (2010) note that police officers generally work alone in high stress environments that requires each officer to use their decision making skills and judgment during every situation they are involved with. In order to thrive in this type of environment each officer has to possess strong critical thinking skills and problem solving ability. As is such, law enforcement training needs to focus on developing and enhancing these skills to ensure each law enforcement officer is able to thrive and succeed under vulnerable circumstances. Law enforcement training typically begins in police academies. Training is continued during the probationary officer's field training program, as well as every year during annual in-service training, other specialty schools, and career enhancement courses that may be offered to each officer. The authors observe that each law enforcement agency needs to ensure that their police officers are trained and the training they receive needs to be comprehensive and include areas of every situation police officers may find themselves in.

In the state of Wisconsin the Wisconsin Law Enforcement Standards Board is authorized under §15.255 to set and enforce law enforcement standards for professional employment,

education, and training of law enforcement personnel. According to the Wisconsin Law Enforcement Standards Board policy and procedure manual (2013) all law enforcement candidates must meet minimum qualifications that include: being at least 18 years of age, have a high school diploma, have 60 college credits within five years of initial start of employment, have no felony convictions, possess a valid drivers license, and pass a physical assessment, oral panel interview and a drug test. This board also establishes the curriculum and minimum training hours that each state certified training facility must use to train potential law enforcement officers. Although state law only requires 400 hours of preparatory law enforcement training the standards board approved a 520-hour curriculum in 2002 that by 2004 has been adopted by all certified training facilities in the state. In order to teach at training academies instructors must become certified and must meet minimum board standards such as 3 years employment in law enforcement or a specialized related field, 60 college credits, complete a state approved instructor development course, and complete a topic specific instructor course such as DAAT or firearms.

Under Wisconsin's 520-hour law enforcement training curriculum potential law enforcement officers receive training in a variety of areas that include policing principles, legal context, tactical skills, relational skills, patrol procedures, and investigations. While some subjects, such as report writing, constitutional law, and Emergency Vehicle Operation and Control or EVOC may include references to use of force concepts or applications the majority of use these concepts and techniques are taught to law enforcement recruits during the tactical skills portion of the academy. The Law Enforcement Basic Training 520-hour curriculum (2013) includes 110 hours of tactical skills training. Tactical skills training is broken down into 48 hours

of DAAT training, 54 hours of firearms training, 4 hours of tactical response, and 4 hours of hazardous materials training.

The course curriculum indicates that during the 48 hours of DAAT training students are taught the legal basis for the use of force and limitations of using force. Extensive time is spent explaining, demonstrating, and practicing the intervention options that have been previously discussed in a hand-on environment. While the number of hours spent on DAAT training may seem plentiful it should be noted that only 2 hours of that training is focused on use of force concepts. Similarly, the 54 hours of firearms includes learning the legal basis for the use of force, deadly force, decision making skills, safety considerations, and basic shooting fundamentals. However, only 2 hours of the training is dedicated to deadly force decision making. Also, use of force specific report writing instruction is not mandated by the state, but may be covered during report writing instruction, which is 22 hours long according to the state curriculum.

The Wisconsin Law Enforcement Standards Board (2013) states once law enforcement officers complete the 520-hour curriculum they are required to have 24 hours of annual training to remain certified as a police officer. However, the content of this training is left to the discretion of each employing law enforcement agency and the only mandate by the state is 4 hours of vehicle pursuit training every other year. With that in mind law enforcement agencies are not required to train or re-train use of force concepts, tactics, or applications during their annual re-certification training. However, additional instruction is often given to newly hired officers during their field training programs.

Many other states have similar state mandated curriculums with varying length requirements and use of force training. Illinois Police Training Act 50 ILCS 705 authorizes the Illinois Law Enforcement Standards Board to establish police training including training in

arrests, seizures, and firearms. The Illinois State Police (2014) indicate that beginning in 1982 police training curriculums was expanded to 400 hours. The Indiana Law Enforcement Academy (2014) reports that potential law enforcement officers in the state of Indiana receive over 600 hours of police training including training in firearms and physical tactics. However, unlike the state of Wisconsin, law enforcement officers in the state of Indiana are required to attend police officers to attend 24 hours of annually training that must include 2 hours in firearms, 2 hours in physical tactics/use of force, and 2 hours in police vehicle operation.

It is important for each state to have uniformity in training and standards to ensure that all law enforcement officers can respond and deploy force in accordance with federal and state regulations. However, there appears to be some weakness to the training methods used as well, how officers are educated throughout the course of their careers. It is apparent that current training models spend a majority of training time on practical demonstrations and applications rather than focusing attention on the decision making process and the fundamental rationale behind use of force concepts, definitions, and legal standings. Establishing additional focus in this area could have meaningful impact in reducing civil lawsuits that are generated due to police use of force actions. Also, establishing state mandated re-training in use of force concepts and the decision making process during annual re-certification training could also help officers to re-identify with these principles and concepts to better prepare them daily operations.

Early Warning Systems and Officer Discipline

Early Warning Systems

It is very important for law enforcement agencies to have well written policies and procedures as well as ensuring that those who fill the ranks as law enforcement officers are sufficiently trained in using force to limit the possibility of civil lawsuits. However, regardless of

any policy and procedure or, the amount of time and effort that is given to training law enforcement officers, there is always the potential of having officers who abuse their authority and are excessive in the amount of force they use. Ortmeier and Meese (2010) note that unethical behavior patterns generally do not happen over night and may develop over a lengthy period of time. Such patterns may persist in extraordinary high numbers in arrests, use of force incidents, resisting arrest incidents, and continual complaints made by citizens against a particular officer. To combat such behavior law enforcement administrators should ensure that there are mechanisms in place to not only identify problem officers, but also to intervene and discipline officers for unethical behavior or excessive use of force. By identifying and dealing with these types of behavior law enforcement agencies can greatly reduce the potential of civil lawsuits against their respective agency.

Early Warning Systems or EWS is one mechanism that law enforcement agencies can use to monitor and control employee behavior. Gaines and Kappeler (2008) explain that early warning systems are internal tracking mechanisms used to identify and track the behavior patterns of police officers employed by the agency. Their purpose is to identify problematic behavior and intervene prior to having to take formal disciplinary action. These systems can be used to track all sorts of behaviors and identifiers and each system can choose what data to track. Some of the types of behavior and data that can be tracked include: use of force incidents, arrests, traffic stops, searches and seizures, citizen complaints, criminal charges and traffic violations, lawsuits against officers, discharge of firearms, misconduct allegations, disciplinary actions, on-duty traffic accidents, training and job performance, and use of sick time. Thresholds can be established within each identifier that can trigger an internal review of the officer's

records as well as recommend intervention and discipline options the law enforcement agency can utilize to deal with the undesired behaviors of officers.

Walker, Alpert, and Kenney (2001) observe the first Early Warning System was first implemented by the Miami Police Department in 1981 based upon the recommendation of the U.S. Commission on Civil Rights to use early warning systems to identify problem officers. The data and thresholds of this system, called the Early Identification System, included the officer receiving five or more complaints in a two-year period, five or more use of force incidents as the primary officer in a two-year period, five or more reprimands in a two-year period, and three or more firearm discharges in a five-year period. Once a threshold was met supervision would review the officers file and recommend any number of corrective options ranging from training, counseling, discipline, and transfers. These recommendations were then reviewed and approved by internal affairs. Gaines and Kappeler (2008) observe that the Early Warning System implemented by the Miami Police Department reduced the rate of citizen complaints against police officers of the department and reduced the number of civil lawsuits against the department.

Walker, Alpert, and Kenney (2001) report that by 1999 almost 40% of local law enforcement agencies whom serve communities with populations of 50,000 or more have established or planned to establish some type of early warning system. Early warning systems can be used as a deterrent. By intervening and taking corrective action, law enforcement agencies attempt to have officers change their behavior prior to having to dole out official disciplinary action. In order for early warning systems to be effective the mechanism must include monitoring programs that track officers improvements, or lack thereof, by supervision. The

length of these monitoring programs can vary and should be conducted continuously throughout the process by supervision.

Early Warning Systems have been able to identify problem officers. Through subsequent intervention and monitoring law enforcement agencies have seen a reduction in citizen complaints. Walker (2001) looked at the effects Early Warning Systems had on three large metropolitan cities in the United States. Officers involved with intervention programs in Minneapolis saw citizens complaints drop by 67% after the first year of intervention. Those involved with department intervention programs saw similar results in New Orleans as citizen complaints were reduced by 62%. In Miami-Dade, just 4% of officers who were involved with intervention had no use of force reports prior to intervention taking place. This number increased to 50% having no use of force reports after subsequent intervention programs.

The IACP (2002) believes that intervention programs should have both deterrent mechanisms and officer training and education. Intervention requires a high degree of commitment from supervision as tracking, intervention, and monitoring can be a laborious process. Computer software can assist the agency in deciding what behaviors to track and to sort through complex databases. Supervisors need to be committed to early intervention options and begin the process early in order for early warning systems to be effective. They must overcome any apprehension they may have regarding confronting problem officers or intervening with officers who may have recently been considered a peer. They also need to be committed to following through with intervention options and monitoring the officer's improvements throughout the process.

It is important to understand that intervention is not discipline. However, intervention does not preclude administration from using official discipline. Walker, Osnick-Milligan, and

Berke (2006) state there are several intervention options that are available to law enforcement administrators and supervisors who are in charge of early warning systems. These strategies include counseling by immediate supervisors, additional training, professional counseling for personal and family problems, peer officer support programs, crises intervention teams, and reassignment or relief of duty. Any one option may be use or a tailored program consisting of multiple options can be created to meet the needs of each individual officer.

The IACP (2002) points out several drawbacks to Early Warning Systems and interventions. They include reducing police officers willingness to be active when fearful of being identified as problematic, adverse impacts on officers' careers, supervisors who are not committed to the programs, legal liability for not using an established system, and liability from data captured by early warning systems. However, as Walker (2002) notes, these systems can be an effective shield from civil liability in that it shows law enforcement agencies are attempting to identify and deal with misconduct. Data also suggests that Early Warning Systems have been successful in reducing citizen complaints, use of force reports, and potential civil lawsuits resulting from both.

Officer Discipline

All law enforcement agencies have the potential of having police officers in their ranks that abuse their authority and engage in unethical behavior. These types of behavior can include corruption, bribery, extortion, gratuities, and excessive use of force. These types of behavior are generally developed over time and are generally engaged in by a select few within a police department. How unethical conduct is handled within a department can affect internal and external views of the agency and lead to a loss of credibility among citizens in the community.

Unethical officers do exist in law enforcement agencies, and therefore it is important to have internal and external mechanisms in place that can detect such behaviors and allow administrators the opportunity to intervene and address unethical conduct. Part of that process includes disciplining police officers that engage in unethical conduct and abuse their authority. Ortmeier and Meese (2010) point out that the aim of disciplinary action should be to improve the performance of the police officer rather than serving as a form of punishment or revenge. When properly utilized the police officer will be advised of any problems with their behavior and educated in a manner as to correct any deficiencies. It is also important that any discipline that is implemented by administrators be objectionable and doled out in a consistent manner among all members of the agency.

There can be many reasons why some leaders in criminal justice organizations are reluctant to deal with ethical misconduct. Among them are the police subculture, inadequate training, and lack of intestinal fortitude. Ortmeier and Meese (2010) contend that the police subculture is the greatest obstacle to achieving police accountability. Police officers tend to develop an inner sanctuary that shields and protects officers from occupational hazards. Values and beliefs are instilled in officers from the moment they are hired and reinforced throughout their career. Officers tend to develop loyalty among one another and would do almost anything to protect each other. As an officer moves up through the ranks they may be reluctant or in some instances incapable of dealing with the ethical misconduct of other officers. Therefore, it is important that strong leaders exist throughout the department who are able to effectively implement disciplinary strategies.

There are different strategies and varying opinions as to the effectiveness of those strategies within the criminal justice community. According to the Community Policing Dispatch

(2008) the traditional model of police discipline is the standard punitive model that focuses on manufacturing a punishment that is equivalent to the offense committed by the police officer. This model focuses on deterrence and issuing stronger punishments for officers who are repeat offenders. The goal of this model of discipline is to gain compliance from law enforcement officers to follow the department's policies and procedures and refrain from engaging in the unethical conduct.

The traditional model of police discipline seeks to be objective, uniform, and consistent when applied. Ortmeier and Meese (2010) argue that progressive discipline should be used to achieve these goals. Progressive discipline is a disciplinary continuum that progresses through several corrective actions. It begins with verbal warnings given to the officer, which can increase to a verbal warning that is documented in personnel files. This is followed by written reprimands, suspensions, demotions, and ultimately, terminating the employment of an officer. While the progressive approach is ideal, certain situations may not allow the implementation of such approach as immediate suspension, demotion, or termination may be required depending on the severity of the offense.

There have been some problems associated with traditional approaches to officer discipline. Shane (2012) believes officers find no comfort or fairness in current disciplinary processes. Shane references the Mollen Commission of 1994 and the Rampart Independent Review Panel of 2000 as two examples of reviews that found there was unequal treatment when it came to dispersing officer discipline inside police departments. Police officer rights and union protections have also led to police officers challenging disciplinary actions and the authority of administrators to take disciplinary action.

There are also several emerging strategies and approaches to dealing with officer discipline. Shane explores an alternative approach that argues a rational sentencing structure can be utilized to better discipline officers while ensuring that the discipline given by administrators is reasoned and consistent throughout the department. To implement such an approach requires the use of a disciplinary matrix. Shane (2012) states the purpose of a disciplinary matrix is to create a format, which gives administrative personnel a predictable, progressive, and uniform format to use when disciplining officers in their agency. The disciplinary matrix accounts for the seriousness of the offense, any prior disciplinary action taken against the officer, and the aggravating and mitigating circumstances. There are many goals associated with utilizing a disciplinary matrix. First, using a disciplinary matrix will result in equal treatment amongst all officers and consistency will be achieved. Other goals include promoting progressive discipline and positive corrective action, public satisfaction with disciplinary actions taken by the agency, protecting officers from excessive discipline, and providing/warning police officers what disciplinary action will be taken against them for their behavior.

Police Chief (2014) states a disciplinary matrix should only be used for punitive action of misconduct. Behavioral issues should be handled through other methods such as training, education, counseling, and supervision. A disciplinary matrix is divided into several columns that include the disciplinary history of the officer. Rows of the matrix represent the seriousness of the offense engaged in by the officer. As the disciplinary action taken against the officer and the seriousness of the offense increases, so does the punitive action taken. This provides the supervisor or disciplinary panel with reviewing incidents guidance when deciding what disciplinary course of action to take. By creating and using such a format officers can expect what disciplinary action will be given to them and supervisors are provided a uniform and

consistent format that ensures all officers are treated fairly and the public is satisfied with the outcome. This can be accomplished by establishing a policy and procedure that defines the disciplinary process to the officers employed by the agency.

Other law enforcement agencies have taken yet other approaches in disciplining their officers. The Community Policing Dispatch (2008) cites the Houston Police Department as an example, who implemented a constructive alternative model that focused on constructive opportunities, like community service, as punishment rather than traditional punishments such as suspension and demotion. This process offered officers the chance to work with community members in community-orientated programs. The goal of this model is to remind the officer of the agency's standards and goals while also helping community members and programs who need the help. This model also aims to improve the relationship between the public and police. The Los Angeles Police Department began to approach discipline by thinking about strategy first vs. implementing a harsh penalty. The focus here is to improve the thinking and behavior of the officer by influencing their thinking. Therefore, there needs to be balance between the penalty handed out and what serves the officer best in redirecting them towards organizational goals and standards. Disciplinary matrices and other approaches to officer discipline are fairly new concepts and therefore, research to their strengths and weaknesses is currently limited.

Police Use of Force Reviews and Oversight Models

According to the Bureau of Justice Statistics (2006) in 2002 about one third of all excessive force complaints were not sustained, 25% were unfounded, and 23% resulted in the officers being exonerated. Only 8% of all excessive force complaints were sustained. As police actions continue to be highly scrutinized due to extensive media coverage and video footage

captured on cell phones and other video equipment it is important to understand the process that is utilized to investigate allegations of police misconduct.

Internal Reviews

There has been much debate as to the fairness and effectiveness of police use of force reviews and oversight models. According to Walker (2011), one of the main complaints against police officers since the 1960's have been the procedures for handling complaints of police misconduct. Specifically, internal investigations conducted by police agencies have only served as "cover-ups" and a more transparent procedure consisting of independent review should be implemented. So, it is the process in which police misconduct is investigated that has been called into question. Discontent in the community due to police misconduct has forced police agencies to evaluate their internal investigation process and contemplate alternative oversight models such as utilizing outside agencies or citizen review boards. By reviewing both internal approaches and oversight models they can be compared for their strengths and weaknesses and which is more beneficial to delivering police services while maintaining public trust.

One of the primary functions of internal affairs units within a law enforcement agency is to be the primary source for investigating misconduct by police officers. Although internal investigations may vary from department to department, many investigative procedures are similar and are predisposed to high levels of scrutiny by the courts, public, and the media. Policies and procedures establish guidelines, which internal investigators must adhere to. Many states, such as New Jersey, have required agencies by legislative mandate to adopt and adhere to an official policy and procedure regarding internal affairs. The state of New Jersey (2011) has identified ten requirements these policies must adhere to. By analyzing the procedures of a

model internal investigation, such as those in New Jersey, one can consider the strengths and weaknesses associated with such a process.

The first requirement of the New Jersey (2011) policy is that every law enforcement agency must have an internal affairs policy and must incorporate an internal affairs unit into their department structure. The size and scope of each unit will obviously vary on the size and structure of the department and needs of the community. The second requirement is that every law enforcement agency must accept reports of officer misconduct by any person and at any time. All of the complaints shall be investigated if there is sufficient information to warrant an investigation. The third requirement of the policy is that every officer shall be notified in writing that a complaint has been filed against him or her and that an investigation will be conducted. Depending of the severity of the allegation and the potential consequences of allowing an officer to continue working, the officer may be suspended with or without pay during the investigation.

The fourth requirement set forth in the policy is that all allegations of misconduct shall be thoroughly and objectively investigated to their logical conclusion. Concluding investigations will come to an appropriate disposition. Dispositions may be exonerated, sustained, not sustained, or unfounded. Many agencies will establish time limits to ensure this process is completed in a timely and acceptable manner. The fifth requirement is to notify the complainant and the officer of the outcome in writing.

The sixth requirement is to immediately notify the county prosecutor when the investigation indicates the possibility of a criminal act on the part of the officer. This process is important in that it reduces the notion of the department trying to cover up allegations and allows the district attorneys office to conduct their own criminal investigation. Investigations shall include interviewing all complainants and witnesses to include all officers that may have

knowledge of the alleged incident. This process is also extremely important in that it requires internal affair units to interview all internal members of the department regarding the allegation. Other investigation strategies shall also be utilized to include but not limited to: physical evidence, photographs, physical tests, drug testing, legal polygraphs, search and seizure, electronic surveillance, lineups, and collateral issues. Obviously, all investigative techniques shall be conducted legally, ethically, and within departmental policies and procedures.

The final requirements of the New Jersey policy is that all internal affairs units must maintain a records system of internal investigations, provide a written summary of internal investigation activity to the district attorneys office, and release to the public a summary of all complaints, investigations, and dispositions. These requirements are essential in that it provides a method of accountability and ensures that law enforcement agencies are not allowed to bury information that may be harmful to the agency. While many more intricacies are explained in most internal affairs polices the information here defines the main strengths of internal affairs and encompasses the bedrock fundamentals necessary to achieve a legal, ethical, and accountable internal affairs division.

One of the chief criticisms of internal affairs investigations is that the outcome is influenced by police investigators that are interested in protecting fellow officers within the department from external sources. As previously observed, Ortmeier and Meese (2010) contend that the police subculture is the greatest obstacle to achieving police accountability. If agencies wish to continue investigating allegations regarding the misconduct of fellow officers transparent policies and procedures need to be established and followed to ensure the public and media are satisfied that an unbiased investigation is occurring. Failing to so can have far reaching consequences that include the ability of the law enforcement agency to deliver effective services,

the safety of the members of the community in which they serve, and the safety of the officer attempting to deliver those services.

External Reviews

Many alternative oversight models have been suggested and attempted to ensure investigations concerning police misconduct are properly conducted. One of those attempts has been assigning an independent or non-involved law enforcement agency to conduct the investigation. Proponents of this method argue removing internal investigators from the process and assigning an independent agency to conduct the investigation can attain objective investigations regarding police misconduct. Many law enforcement agencies already prohibit members of the department to partake in investigations concerning the off-duty conduct of other officers of the department, such as domestic abuse allegations. Many law enforcement agencies also utilize this approach when investigating cases involving serious injury or death. The question is whether this policy should be utilized concerning all allegations of police misconduct whether the officer is on duty or not?

There may be some skepticism of the independent oversight model. According to the Commission for Public Complaints (CPC, 2012) in Canada, there is little evidence that external agencies obtain higher levels of cooperation from other police officers when conducting investigations. Additionally, without public oversight external investigations conducted by another law enforcement agency will produce similar results of internal affairs investigations and subsequently, low levels of sustained complaints. Furthermore, the CPC (2012) argues that this type of model is usually an unlegislated process that is based on formal agreements and protocols between different law enforcement agencies and may only give the appearance of an independent investigation.

Citizen Review Boards

Many have argued for a more open process where the public is part of the process in deciding whether allegations of police misconduct can be sustained. For those who possess this point of view citizen review boards offer the alternative to internal investigations. One of the primary functions of citizen oversight models is to provide an independent review of citizen complaints. According to the City of Albuquerque website (2012) there has been considerable growth in citizen oversight of police misconduct. In 1980 there were an estimated 13 oversight agencies compared to more than 80 by 1996. In addition to conducting independent investigations citizen review boards also play a role in policy review, public information, and have been instrumental in the implementation of early warning systems that are utilized by many law enforcement agencies across the country.

According to the International Association of Chiefs of Police (2000) there are four common citizen review models. Class I is a Citizen Review Board. Under this model citizen complaints are investigated and recommendations for disciplinary action is made by a board comprised of citizens of the community. The citizen review board handles each step in the process from investigation to sanctions and this model is considered the most independent citizen review model.

The second model explained by the IACP (2000) is comprised of police review and citizen oversight. Under this model citizen complaints are investigated by the law enforcement agency and recommendations for sanctions is also made by the law enforcement agency. A board of citizens in the community provides oversight under this model. The police agency will handle each step of the complaint process and a board of citizens will review the investigation and

consider if the outcome and disciplinary measures are appropriate. Although this model provides citizen oversight it is considered less independent than Citizen Review Boards.

The third model presented by the IACP (2000) is comprised of police review and an appeal board containing both citizens and police officers. Under this model the internal affairs division of the law enforcement agency will investigate complaints and recommend disciplinary action to the chief of the department. Any outcome can be appealed to an appeal board that is comprised of both citizens and police officers. The police department retains control over the entire procedure and citizens' input and recommendations are limited to cases that are handled during the appeal process.

The final model described by the IACP (2000) is an independent citizen auditor. Under this model the complaint is handled by internal affairs and they will determine the disposition and recommend disciplinary action to the chief. An auditor can access the process and results and determine if the findings are accurate. The auditor can also make recommendations to the agency to improve the overall process as they see fit. Auditors can also contact the complainants to determine if they are satisfied with the outcome. This process limits the level of involvement citizens have during the complaint process. While each model presents its own challenges each agency needs to determine which model would be most effective for their agency and best serve the community.

Many law enforcement agencies in the United States have adopted and utilized some form of citizen review. While the name or title of the program may vary from department to department their functions are similar in that they provide some form of oversight to investigations conducted by internal affairs units. According to Schwartz (2010) the Seattle Police Department appointed a civilian director to the internal affairs unit called the Office of

Professional Accountability or OPA. The office was created in 1999 after a high-profile scandal within the department. The OPA reviews civilian complaints and investigates the most serious cases. The office also tracks early warning systems and reviews lawsuits.

In 2001, the Portland Police Department created the Independent Review Division or IPR. Schwartz (2010) states this office was created to receive civilian complaints, refer complaints to internal affairs, review internal affairs investigations, and conduct their own investigations. An independent auditor operates under this office and also has the authority to investigate lawsuit claims. Similarly, the Denver Police Department created the Office of Independent Monitor or OIM in 2004 and in 2007 the Chicago Police Department created the Independent Police Review Authority or IPRA. The OIM and IPRA are independent of internal affairs and oversee internal affairs investigations.

The overall effectiveness of citizen oversight models when compared to internal affairs results is ambiguous at best. The fact that citizen oversight models and usage are relatively new means little research has been conducted to evaluate their effectiveness. The ultimate success or failure of these programs cannot be measured in terms of higher sustained complaint rates or more officers being disciplined for their actions. Walker (2005) supports this principle and contends that sustained rates of misconduct are virtually the same regardless of whether or not a citizen oversight model was used. Of importance is the transparency that is associated with citizen oversight models compared to suspected secrecy that shrouds internal affairs units. Citizens should be satisfied that their concerns are addressed and appropriate action is taken when an officer does abuse the powers they are entrusted with.

SECTION III: Model Programs and Recommendations

There are many strategies that law enforcement agencies can utilize to reduce the risk of civil lawsuits against their officers. While strategies should be tailored to meet the needs of each law enforcement agency and the community it serves, a comprehensive approach should be utilized to ensure a solid foundation is formed and both internal and external mechanisms are in place that can recognize undesired behavior. The society that we live in today allows for instant communication through a variety of mediums. As is such, it is essential that law enforcement agencies establish a transparent approach to dealing with use of force issues that appreciates the delicate balance between enforcing the law and preserving the Constitutional freedoms that all have the right to enjoy. This can be accomplished by addressing the needs of each individual law enforcement agencies and implementing appropriate strategies in: ethical leadership, recruitment, mentoring, policy, training, Early Warning systems, officer discipline, use of force review models, and technology.

Ethics

Establishing an ethical foundation is essential to all law enforcement agencies. Ethics is a discipline defined by Ortmeier and Meese (2010) as the study of principles of good conduct and systems of moral behaviors. Griffin and Moorhead (2008) add that ethics is a person's beliefs or attitudes regarding what is right and wrong given a certain set of circumstances. Law enforcement agencies are faced with many ethical dilemmas in a constantly changing diverse environment every day. Finding appropriate answers or courses of action in this type of environment may not always be easy and represents a definite challenge to both leaders and employees of the organization.

Many authors have examined the importance ethical standards has on organizational culture and the impact organizational culture has on its employees. Meyers (2004) discusses this issue and addresses how organizational culture is created, addressed by the leaders of the organization, and the impact the culture has on employees in the organization. Meyers argues that in order to achieve an ethical organization the focus needs to be on individual behavior within the organization. Specifically, top-level managers who establish organizational values and how those values are implemented in the everyday actions of employees tasked with carrying out the organizational mission. Employees of an organization often make decisions everyday that are consistent and in accordance with these organizational values. Behavior is reinforced by repetition and the values of the organization become accepted. This process influences all perceptions, categorizations, and actions of the employees.

Top-level managers or those situated at the top of the hierarchal “chain of command” influence and implement the culture of the organization through a variety of mechanisms such as policies, procedures, rules, and codes of ethics. These regulatory formats often serve as a guideline for employees and define acceptable behavior. They are also often referred to when explaining disciplinary action to employees. However, they can only be effective and meaningful if those at the top of the “chain of command” adhere them to. Meyers (2004) argues this is important to consider because humans are more apt to respond to behavioral reinforcement than from reading a policy and procedure manual. Reinforcement of unethical behavior can equally impact how an employee views accepted behavior. The employee may think that if those who break the rules are not punished then the behavior must be acceptable. These actions play a major role in creating the culture of the organization.

Other studies, such as the one conducted by Sabir, Iqbal, Rehman, Shah, and Yemeen (2012), affirm Meyer's conclusion and posit that ethical leadership will increase employee performance and organizational achievement. Khakssar (2013) also researched this issue and found that managers of organizations are role models for others in the organization to follow. By demonstrating ethical conduct through certain behaviors or the decision making process they are able to direct the outcomes of decisions made by others in the organization. Therefore, by establishing and adhering to a code of ethics law enforcement agencies can greatly reduce the potential of civil lawsuits against their officers if these ethics are considered when deciding to use force.

Recruitment

While establishing a code of ethics is essential recruitment processes need to be tailored to meet the needs of the agency. Orrick (2007) had recommended several strategies to recruit and retain qualified police officers. First, each law enforcement agency needs to develop their core values and employer brand. Once this is established recruiters can target specific groups or organizations that possess the traits the organization is looking for, such as the military, institutions of higher learning, or other groups. Many screening mechanisms can be used to help ensure a police department hires honest officers who have high levels of integrity. Some of these processes can consist of recruitment techniques, psychological screening examinations, interviews, written examinations containing ethical questions, and background checks. It is important for a hiring agency to establish criteria of what is to be expected from potential officers and only the most qualified individuals are selected. By choosing only highly qualified officers who possess the ability to make prudent decision in stressful situations law enforcement agencies can reduce the potential of civil lawsuits in use of force incidents.

Mentoring Programs

The molding of police officers does not have to end after initial training or the completion of field training programs. Sprafka and Kranda (2008) implementing a mentoring program into a law enforcement agency's operational picture can be beneficial to the newly hired officer, the agency, and the community they both serve. This process involves veteran officers providing insight and guidance to new hired officers aimed at improving the overall effectiveness and knowledge of the officer. This program increases the newly hired officer's chances of success and can be influential in instilling the core beliefs and ethics of the agency. The mentoring program is not evaluation based and serves as a support mechanism for new officers. Developing and instilling the proper attitudes decreases the likelihood of officers engaging in undesired behavior and increases the chances of officer deploying force in accordance with training and policies and procedures.

Policy

It is paramount that police officers of an agency are properly guided and trained so that they can react quickly and make correct decisions in use of force incidents. All law enforcement agencies need to develop and implement use of force policies regardless of state mandates. Use of force policies need to meet state and federal legal requirements and also clearly articulate any restrictions or limitations on the use of force. It is this guideline from which law enforcement officers derive their decisions from in use of force incidents. By establishing and ensuring officers adhere to use of force policies the potential for civil liability is greatly diminished. Officers can assure they will be legally protected against unfounded allegations regarding excessive use of force complaints.

Training

The training of police officers is a constantly revolving process and typically varies from state to state. While uniformity is essential to training to ensure all law enforcement officers are adequately prepared to do their jobs departments need to increase the amount of training officers receive in the area of use of force throughout their careers. As previously discussed, police officers in the state of Wisconsin are not required to attend any type of mandatory training in the area of use of force after completing initial law enforcement academy training. While there is not state mandated use of force training required during annual in-service training it would behoove law enforcement administrators to ensure that yearly training includes some sort of use of force training. The type of training can vary from lecture to practical applications, but should focus on use of force concepts and improving the use of force decision making process.

Research has been conducted showing the need for improvements in police training time in use of force scenarios. Bennell and Jones (2007) looked at the benefits of use of force simulation training and found that increased training time is required in order to achieve desired performance gains in the application of force. Simply put, increases in training time in use of force concepts and the application of force will only increase the sound decision making ability of law enforcement officers and likely reduce the chances of force being applied in an excessive manner. As excessive force decreases so will the possibility of civil lawsuits against police officers.

Early Warning Systems

There are many benefits law enforcement agencies can gain by utilizing some type of early warning system to identify problem officers within the police ranks. The cited research has shown that early warning systems have been able to reduce the number of citizen complaints

against officers who participate in such programs and potential civil liability incidents have decreased. Early warning systems can quickly identify potentially dangerous behavior and problems that need to be confronted. By identifying unacceptable behavior law enforcement administrators can intervene and attempt to correct the unacceptable behavior prior to the problem worsening and resulting in a civil lawsuit against the officer or law enforcement agency. Walker, Osnick, and Berke (2006) also note that early warnings systems can increase both internal morale and public appeasement with police accountability towards officers who abuse their authority. These systems can also track positive behaviors and ensure officers are being recognized for their efforts in making the community a safer place to live.

Alpert and Walker (2000) identify three model components to early warning systems that include selection criteria, intervention, and post-intervention follow-up. The selection criteria should be tailored to meet the needs of the individual agency. Selection criteria should be based upon a review of the agency's history, culture, and problems that are occurring within the agency. Therefore, these systems can be used by law enforcement agencies of all sizes and should be tailored to meet their needs as such. Top administrators need to create buy-in from front line supervisors to ensure intervention is taken and follow through considerations are being made as early warning systems can only be effective in achieving accountability by utilizing both methods.

Officer Discipline

Law enforcement agencies need to ensure that discipline is implemented in a consistent and uniform manner. Good 'ol boy networks and preferential treatment can create hostility with the agency and give a negative impression to those viewing the agency from the outside. At the very least law enforcement administrators need to ensure that some sort of traditional

disciplinary method is implemented and used in a fair and consistent manner. Emerging concepts and strategies, such as discipline matrices, can also be implemented. Discipline matrices allow law enforcement administrators to use a format that includes a predictable, progressive, and uniform approach to officer discipline. By utilizing such an approach top administrators can ensure that accountability is achieved and fairness is achieved both within the ranks of officers working for the department and the citizens of the community the department serves. Both can reduce the potential of circumstances that lead to civil lawsuits against the law enforcement agency.

Use of Force Review Models

In addition to the identifying problematic police officers and implementing discipline law enforcement agencies need to ensure transparency is achieved regarding use of force reviews. By implementing one of the four citizen review models presented by the IACP (2000) all law enforcement agencies regardless of size and community makeup can achieve some degree of transparency when it comes to reviewing police use of force incidents. The review process selected by each agency should be the model that best meets the needs of both the police agency and community it is expected to oversee. While research has shown that citizen oversight models have not resulted in a higher sustained rate of complaints against law enforcement officers it does help to build partnerships between law enforcement, government officials, and citizens in the community to ensure that the review process is transparent and accountability can be achieved if the circumstances of the situation warrant such action.

Technology

Law enforcement agencies should utilize advancements in technology and equipment to their advantage in attempting to reduce the agency's civil liability. Some of the advancement

seen in law enforcement have included the use of OC spray, tasers, bean bag rounds, flash bangs, and semi-automatic weapons and have changed the way police officers train and utilize force.

These advancements have made law enforcement officers safer and reduced injuries by allowing the officer to use equipment employed at distances and reduce hands on contact with combative subjects. However, it could be argued that cameras mounted on patrol vehicles and microphones worn by police officers have had a greater impact in reducing the amount of civil lawsuits sustained against law enforcement agencies.

Draisin (2011) states the use of vehicle mounted cameras began in 1980 at the behest of Mothers against Drunk Driving of MADD to document those suspect of driving under the influence of alcohol. Since then, squad mounted cameras have been utilized to address a number of issues such as questionable drug arrests and racial profiling. Draisin's study asserts that law enforcement agencies benefits from using cameras and microphones in three areas: officer safety, professionalism/perception, and training purposes.

Officer safety is increased by recording incidents where officers are assaulted and have assisted in apprehending suspects. Cameras have also allowed agencies to quickly review videos when citizens make complaints against their officers. By reviewing the video expeditiously agencies can greatly reduce the impact of review and courts costs associated with complaints made against officers. Video also allows most complaints to be handled on the shift supervisory level and reduces the amount of time and resources utilized by internal affairs in reviewing these incidents. These videos have also assisted prosecutors in attaining convictions and reducing the amount of time spent in court. Video recordings of incidents also can be utilized as a training tool. Officers can review their stops and contacts with citizens to critique them and make improvements.

Squad cameras and microphones are constantly evolving. Today, law enforcement agencies utilize cameras worn by the individual officer, lapel microphones, and even taser cameras. As with any technological advancement, cost may prohibit many agencies from having the ability to implement such technology in to their operational picture. However, the benefits and potential monetary savings through reducing civil lawsuits, court times and costs, and man hours used to review citizen complaints by law enforcement agencies and review boards may cause many law enforcements agencies and local governments to reconsider the true cost and potential savings associated with this technology. Federal grants should be considered as an option to financially strapped municipalities who do not have the funds needed to implement this technology into their agencies.

SECTION V: SUMMARY AND CONCLUSIONS

Police officers and law enforcement agencies encounter many dangerous situations on a daily basis that require them to make split second assessments and decisions. Often, these decisions require police officers to use force when attempting to apprehend criminal offenders. This process needs to be accomplished while ensuring the protections and freedoms afforded to every individual in this country through the United States Constitution is not violated. This often places police officers and law enforcement agencies in delicate circumstances that require offices to justify their actions or face civil lawsuits for alleged violations. The purpose of this paper was to review current practices that are being used by law enforcement agencies to reduce civil liability and to identify the strengths and weaknesses of these policies and programs.

The research presented in this paper has provided strengths and weaknesses in how law enforcement agencies attempt to reduce civil liability in use of force incidents. Training times in law enforcement academies and the amount of time that is spent on use of force concepts during this training has increased. However, improvement can be made in longevity training as law enforcement officers proceed throughout their careers. All law enforcement agencies and officers should review use of force policies frequently as officers refer to them when deciding to use force.

Early Warning Systems have proven to be effective in reducing the number of citizen complaints against law enforcement officers. When implemented properly by law enforcement agencies and intervention options are followed through with administrators, this can reduce undesired behavior among police officers and reduce the chances of being held liable in civil court. Establishing consistent and fair disciplinary procedures can reduce the potential of civil lawsuits while also increasing morale within the department and showing members of the

community that the police officers that serve their community are being held accountable for their actions.

While research is limited regarding the effectiveness of citizen oversight models in sustaining citizen complaints they do provide law enforcement agencies a transparent approach to review use of force incidents. The oversight models presented by the IACP should be reviewed by each law enforcement agency and evaluated in how each could impact their respective agencies and assist in reviewing use of force incidents and reducing discontent from community members.

While there may not be a one size fits all approach to reducing civil liability in use of force incidents, each law enforcement agency can specifically tailor their policies and programs to meet their needs. Strong ethical leadership must be established and serve as the foundation of any law enforcement agency. Recruitment processes need to be evaluated for their effectiveness in attaining the highest qualified candidates that can discharge their duties within the context of the law. This should be accompanied by ensuring officers get adequate training and the use of mentors can assist in instilling desired personal traits in newly hired officers.

Law enforcement administrators also need to use technology to their advantage and implement technological advancements into their operational picture. Current technology allows officers to subdue subjects at greater distances, which reduces the chances of injury to both the officer and suspect involved. Cameras mounted in squads or worn by individual officers can greatly increase officer safety and quickly resolve allegations of misconduct against law enforcement officers.

When implementing any new strategy or policy into the operational picture of a law enforcement agency it is important to develop an evaluation process to determine the effects each

program has on meeting its intended purpose. Any evaluation process undertaken should be evidence-based that clearly shows how effective the program/policy is at meeting its stated objectives. By developing evaluation processes, law enforcement administrators can use the information obtained to guide them when making decisions. This information may validate the continued use of certain policies or programs or recommend that a different course of action be taken.

With the considerable amount of variables in relation to the stated problem in this paper it would be difficult to recommend a specific evaluation process for the recommendations. Each law enforcement agency varies in size, strength, community served, defined problems, and ability to implement certain policies or programs. However, it is essential that law enforcement administrators establish an evaluation process, whether that be formative or summative, that can clearly identify the strengths and weaknesses of the strategies they choose to employ to reduce civil liability in use of force incidents. This evaluation research should be tailored to analyze the programs each law enforcement agency employs and produce results that can assist administrators in making sound decisions that are grounded in the research.

Research has shown positive impacts in reducing citizen complaints against law enforcement officers. By developing and implementing a comprehensive approach it appears that law enforcement agencies can have a positive effect on reducing their overall civil and criminal liability in use of force incidents. It is important that each agency develops specific strategies that meet the needs of their agency. It is also important that an evaluation process is developed based on implemented strategies that can assess the overall effectiveness of the policies and programs utilized by each individual law enforcement agency. Doing so not only ensures the individual officer and law enforcement agency is protected, but also the freedoms and protections

guaranteed to the citizens that entrust this authority to the police are preserved. Citizens can be confident the police are not abusing this privilege and are being held accountable for their actions.

REFERENCES

- Albuquerque Official City Website. (2012). Alternative Models of Police Oversight. Retrieved March 11th, 2014 from: <http://www.cabq.gov/council/completed-reports-and-studies/apd-oversight-mechanisms/ix-alternative-models-of-police-oversight>.
- Alpert, G.P. & Walker, S. (2000). Police accountability and early warning systems: developing policies and programs. Retrieved April 7th, 2014 from: http://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1009&context=crim_facpub.
- Archibold, C.A. & Maguire, E.R. (2002). Studying civil suits against the police: A serendipitous finding of sample selection bias. *Police Quarterly*, 5, 2, 222-249.
- Archives. (2013). Retrieved February 10th, 2014 from: http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html.
- Bennell, C. & Jones, N.J. (2007). The effectiveness of use of force simulation training final report. Retrieved March 31st, 2014 from: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=25&ved=0CEQQFjAEOBQ&url=http%3A%2F%2Fwww.interpol.int%2FMedia%2FFiles%2FINTERPOL-Expertise%2FIGLC%2FThe-Effectiveness-of-Use-of-Force-Simulation-Training-Final-Report-%25E2%2580%2593-Carleton-University&ei=3OQ-U-CJLkf52wWBw4CYAg&usg=AFQjCNHJ_A0PdeLXH0LUK9GsmWI6_1w3xA.
- Brower v. County of Inyo 489 U.S. 593 (1989). Retrieved June 23rd, 2013 from: <http://supreme.justia.com/cases/federal/us/489/593/case.html>.
- Bureau of Justice Statistics. (2006). Citizen complaints about police use of force. Retrieved March 21st, 2014 from: <http://www.bjs.gov/content/pub/pdf/ccpuf.pdf>.
- California commission on peace officer standards and training. (2007). Basic course workbook. Retrieved February 26th, 2014 from: http://www.hancockcollege.edu/academic_departments/public_safety/law-enforcement/PC_832_VOL_4_V-3.0.pdf.
- City of Canton, Ohio v. Harris 489 U.S. 378 (1989). Retrieved February 26th, 2014 from: <http://supreme.justia.com/cases/federal/us/489/378/case.html>.
- Collins, M. G. (2011). *Section 1983 litigation in a nut shell*. (4th ed.). West, a Thompson business.
- Commission for Public Complaints Against the RCMP. (2012). Police Investigation Police-Final Public Report. Retrieved March 15^h, 2014 from: http://www.cpc-cpp.gc.ca/prr/rep/rev/chair-pre/pipR/pip_5-eng.aspx

- Community Policing Dispatch. (2008). Police discipline and community policing: new models. Retrieved March 20th, 2014 from:
http://cops.usdoj.gov/html/dispatch/August_2008/new_model.htm.
- Draisin, L. (2011). Police technology: an analysis of in-car cameras and body worn cameras. Retrieved April 10th, 2014 from:
<http://www2.cohpa.ucf.edu/cpnm/documents/Police%20Technology%20An%20Analysis%20of%20In%20Car%20Cameras%20and%20Body%20Worn%20Cameras%20Lillian%20Draisin%20spring%202011.pdf>.
- Gaines, L.K. & Kappeler, V.E. (2008). *Policing America*. (6th ed.). Newark, NJ: Lexis Nexis.
- Graham v. Connor. Retrieved November 16th, 2013 from:Lexis-Nexis via U.W. Platteville's Karrmann library at:
http://web.lexisnexis.com.ezproxy.uwplatt.edu/universe/document?_m=257a574e20d0a684ca116365132ae5a1&_docnum=1&wchp=dGLzVzz-zSkVA&_md5=96ddd41288912bbce2472ff025daccda.
- Griffin, R.W. & Moorhead, G. (2012). *Organizational behavior: managing people and organizations*. (10th ed.). Mason, OH: South-Western Cengage Learning.
- IACP National law enforcement policy center. (2006). Use of force. Retrieved February 21st, 2014 from:
<https://wilenet.org/secure/html/tsb/boardroom/policy/iacp/0306update/useofforcepaper.pdf>.
- IACP National law enforcement policy center. (2002). Early warning system concepts and issues. Retrieved February 21st, 2014 from:
<https://wilenet.org/secure/html/tsb/boardroom/policy/iacp/04updates/Early%20Warning%20System%20paper.pdf>.
- IACP National law enforcement policy center. (2000). Police Accountability and Citizen Review. Retrieved March 16th, 2014 from:
<http://www.theiacp.org/PoliceServices/ProfessionalAssistance/Ethics/ReportsResources/PoliceAccountabilityandCitizenReview/tabid/193/Default.aspx#sec5>.
- Illinois State Police. (2014). Academy training. Retrieved February 27th, 2014 from:
<http://www.isp.state.il.us/academy/cadetooverview.cfm>.
- Indiana Law Enforcement Academy. (2014). Basic training. Retrieved February 27th, 2014 from:
<http://www.in.gov/ilea/2380.htm>.
- Kappeler, V.E. (2006). *Critical Issues in Police Civil Liability*. (4th ed.). Long Grove, IL: Waveland Press, Inc.

- Kappeler, V. E. (2006). *Police Civil Liability: Supreme Court cases and materials*. (2nd Ed.) Long Grove, IL: Waveland Press, Inc.
- Khakssar Gharhroodi, H., Tan Sri Modh Ghazali, M.Z., & Seyed Ghorban, Z. (2013). Examining Ethical leadership and its impacts on the followers' behavioral outcomes. *Asian Social Science, Volume 9, Issue 3*. p.91-96.
- Law enforcement basic training 520-hour curriculum. (2013). Competencies and learning objectives. Retrieved February 27th, 2014 from: <https://wilenet.org/html/career/students/law-enforcement/index.html>.
- National Institute of Justice. (2014). The use-of-force continuum. Retrieved February 26th, 2014 from: <http://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/Pages/continuum.aspx>.
- NBC Chicago. (2012). Millions paid to settle police misconduct suits. Retrieved February 8th, 2014 from: <http://www.nbcchicago.com/investigations/unit-5-chicago-reporter-chicago-police-ipra--149771045.html>.
- Meyers, C. (2004). Institutional culture and individual behavior: Creating an ethical environment. *Journal of Science and Engineering Ethics, Volume 10*. p.269-276.
- Minnesota Board of Peace Officer Standards and Training. (2014). Administrators manual. Retrieved February 26th, 2014 from: <https://dps.mn.gov/entity/post/model-policies-learning-objectives/Pages/default.aspx>.
- Monroe v. Pape case brief. (2013). Retrieved January 13th, 2014 from: <http://www.lawnix.com/cases/monroe-pape.html>.
- Monroe v. Pape 365 U.S. 167 (1961). Retrieve January 13th, 2014 from: <http://supreme.justia.com/cases/federal/us/365/167/case.html>.
- New York Daily News. (2012). NYPD sue! Surge in lawsuits vs. police department part of costly trend for the city. Retrieve November 15th, 2013 from: <http://www.nydailynews.com/new-york/new-york-lawsuit-city-article-1.1227937>.
- Orrick, D. (2007). Recruitment, retention, and turnover in law enforcement. *International Association of Chiefs of Police*.
- Ortmeier, P.J., & Meese, E. (2010) *Leadership, ethics, and policing: Challenges for the 21st Century*. (2nd ed.). Upper Saddle River, NJ: Prentice Hall.
- Sabir, M.S., Iqbal, J.M., Rehman, K.U., Shah, K.A., & Yameen, M. (2012). Impact of corporate ethical values on ethical leadership and employee performance. *International Journal of Business and Social Science, 3, 2*,163-171.

- Schmallegger, F. (2009). *Criminal justice today: An introductory text for the 21st century*. (10th ed.). Upper Saddle River, NJ: Pearson Prentice Hall.
- Schwartz, J.C. (2010). What Police Learn From Lawsuits. Retrieved March 16th, 2014 from: http://www.law.stanford.edu/display/images/dynamic/events_media/What_Police_Learn_From_Lawsuits.pdf.
- Shane, J.M. (2012). Police employee disciplinary matrix: An emerging concept. *Police Quarterly*, 15,1,62-91.
- Sprafka, H. & Kranda, A.H. (2008). Institutionalizing mentoring into police departments. *International Association of Chiefs of Police*.
- State of New Jersey. (2011). Internal Affairs Policy & Procedure. Retrieved March 10th, 2014 From: http://www.nj.gov/lps/dcj/agguide/internalaffairs2000v1_2.pdf
- State of Wisconsin Defense and Arrest Tactics Instructor Manual (2007).
- The Police Chief. (2014). Employee disciplinary matrix: A search for fairness in the disciplinary process. Retrieved March 15th, 2014 from: http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1024&issue_id=102006.
- The United States Senate. (2013). Constitution of the United States. Retrieved February 13th, 2014 from: http://www.senate.gov/civics/constitution_item/constitution.htm.
- Tennessee v. Garner 471 U.S. 1 (1985). Retrieved January 21st, 2014 from: <https://supreme.justia.com/cases/federal/us/471/1/case.html>.
- Walker, S. (2011). *Sense and non-sense about crime, drugs, and communities*. (7th ed.). Belmont, CA: Wadsworth.
- Walker, S., Alpert, G.P., & Kenney, D.J. (2001). Early warning systems: responding to the problem police officer. Retrieved March 4th, 2014 from: http://www.theiacp.org/portals/0/pdfs/early_warning_system.pdf.
- Walker, S., Osnick-Milligan, S., & Berke, A. (2006). Strategies for intervening with officers through early intervention systems: a guide for front-line supervisors. Retrieved March 4th, 2014 from: <http://www.cops.usdoj.gov/files/ric/publications/e01060004.pdf>.
- Walker, S. (2005). *The New World of Police Accountability*. Thousand Oaks: Sage Publications, Inc. 6
- Wilenet. (2014). Wisconsin mandatory policies. Retrieved February 21st, 2014 from: <http://wilenet.org/secure/html/tsb/boardroom/policy/mandatory.html>.

Wisconsin Law Enforcement Standards Board. (2013). Policy and procedure manual. Retrieved February 27th, 2014 from:
<https://wilenet.org/html/career/lesb-policy-procedure-manual.pdf>.