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THE DECISION TO USE FORCE IN SOCIAL CONTROL: AN EXAMINATION OF THE LEGAL AND SOCIAL IMPLICATIONS OF POLICY FORMULATION AND IMPLIMENTATION

By

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ABSTRACT

THE DECISION TO USE FORCE IN SOCIAL CONTROL: AN EXAMINATION OF THE LEGAL AND SOCIAL IMPLICATIONS OF POLICY FORMULATION AND IMPLIMENTATION

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The data this study represent a departure from traditional methods of evaluating use of force policies and procedures by depicting the behavior of the courts as they evaluate policies and procedures before them in use of force litigation. Two hundred cases citing seven major causes of action are examined in case law drawn from 12 federal circuit courts and the U.S. Supreme Court.

Holdings of the courts are presented along with selected dicta from leading cases and the opinions of leading scholars writing on use of force policies. The resultant information should enable policy makers to better anticipate likely behavior of the courts in potential litigation and to make policy adjustments proactively rather than after losing a law suit.

The data show some circuits significantly more plaintiff oriented and much more sensitive to certain causes of action.

This study is dedicated to all the courageous citizens who try to make a difference between the rocks and hard places our political system creates for them.

ACKNOWLEDGMENTS

The fact that this study is completed is more a tribute to the leadership and patience of others than to the scholarship of the writer. Recognition should go to the many police officers, corrections officers and defensive tactics trainers who exposed me to so many different ways to handle a difficult job.

Special appreciation is extended to Professor Robert Trojanowicz whose leadership inspired me to try and encouraged me to finish. Professor Jay Siegle provided the structure and guidance required to maintain focus while professors Ken Christian, Rob Worden, David Carter, David Kalinich and Judge Peter Houk, provided a rich mixture of advice when it was needed and humor when it was critical. A unique debt is owed to Lt. Col. Paul S. Embert, U.S.A.F. Ret., who was my mentor, and role model, while I prepared for this study and my career.

Finally, I must express the deepest appreciation to my family whose unflagging confidence in, patience with, and love for me can never be repaid.

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Chapter 1

Introduction

With respect to the use of force, past efforts to improve police effectiveness have concentrated on improving techniques or developing hardware to deal with violent persons. Unfortunately, people continue to get injured and " deadly force has remained a potentially explosive community issue." (Corey, 1981)

Recent examples such as the MOVE incident in Philidelphia, are as available as any major newspaper. (The Los Angeles Daily Journal May 21, 1985 p.4 col 1.) Further, criminal justice agencies continue to be held liable, and ever increasing sums of money are being awarded by the courts. (Brown III, 1986) (Tulsky, 1985) Figure 1 illustrates the distribution of the two hundred cases used in the following study when separated by prevailing party.

		Government Held Liable	Government Held Not Liable
Number of cases	200	126	74

Figure 1 Parties Held Liable In Cases Examined.

The Problem

This paper presents a response to the problems faced by all officers, and especially their supervisors, who must regularly deal with violent and potentially violent situations, yet find that the techniques and equipment available to do so are often determined, during subsequent litigation, to have constituted the use of excessive force. It has even been suggested (Dade County Grand Jury, 1982) that current training programs which deal with use of force questions may, in fact, exacerbate the situation by encouraging officers to use more force than necessary to resolve stressful situations.

It is probable that there are no techniques which are totally safe to employ in all circumstances. If this is so, the emphasis must be placed on teaching the practitioner when certain types of responses will be deemed acceptable by the trier of fact. This requires the practitioner, as well as the policy maker, to know who will be reviewing the officer's actions, and how

they are likely to perceive the events in question. It is one thing to have co-workers agree with a decision, but quite another to have the courts, and the public at large, lend their support. (Muir, 1977) (Skolnick, 1966).

Most police academies require the officer to learn the most often applied areas of the law to the point that most officers can recite traffic law and the penal code, verbatim. Still, both criminal cases and civil litigations are lost because of failure to anticipate how a court will evaluate actions of force or how the court's perception of the officer's role will differ from that of the officer. This does not appear to stem from a lack of ability on the part of line officers. It seems, rather, that they simply do not receive enough training in the intent of the law or in its historical development to be able to consistently make decisions which are compatible with the decisions of the courts. This is a pattern which seems to be reflected in other areas of police training, the effectiveness of that training having come under increasing scrutiny in recent years. Goldstein (1977) put it this way: "There is growing doubt that training in its present form achieves the objectives its proponents hold out for it."

One mid-Michigan prosecutor stated that he liked working with more experienced officers because they made "fewer bad arrests."

> One of two things happens to officers as they gain more experience in court. Either they learn the law from being repeatedly embarrassed by defense attorneys, or they realize their lack of preparation, and avoid making arrests which are the least bit complicated.

Notice that he didn't say more good arrests, just fewer bad ones.

Research Question

This paper is intended to be a descriptive and prescriptive thesis, which will examine the relationship between policy formulation, policy implementation, and the law as they are applied to the decision to use force in social control. Primarily focusing on the needs of police and corrections administrators, a number of alternative courses of action will be examined.

The basic unit of analysis will be established case law. Discussion of the implications will take into consideration the U.S. Constitution, federal statutes, state constitutions, and state laws.

The research question guiding this investigation has two parts:

1) Is governmental liability in the use of force a result of unsound policy decisions?

2) If so, does the problem lie with the formulation of policy or with the implementation of the policy?

Theory

The above hypothesis is based on a number of theories of learning. The specific tenets of these theories and how they are important to the administrator are discussed in chapter 5.

Purpose

It is fairly safe to say that few police officers are lawyers or medical doctors or, even, martial arts experts. Yet, these are the experts who may be called to second guess the officer's decisions. If legal action is taken, plaintiff's attorney will ask difficult questions, which the practitioner is probably not qualified to answer, then introduce the "expert" to impeach the practitioner's answers and decisions.

The idea behind this project is to show the reader what courts have done with issues relating to the use of

force in the past. This will enable the reader to anticipate the types of questions the courts will ask those involved in any use of force action resulting in litigation. Having done so, the decisions and actions of those involved should be more in tune with the opinions of the reviewing body. The decision would still be reviewed, as well it should be, but it would, at least, be an informed decision, rather than one based on instinct, emotion, or habit.

The reader will have an opportunity to examine the behavior of the courts and their impact on the evolution of the law. Beginning with the Constitution, and concentrating on those areas of the law most problematic for the practitioner, civil and vicarious liability, this exercise will contrast and compare various strategies and techniques for applying force. Based on the results of the cases examined , and the opinions of various authorities, Recommendations will be made as to efficacy, reliability, and defensability of various methods for developing policies and procedures.

Nature and Benefit of Analysis

A prominent professor of law once wrote of police and other legal officials:

> Legal officials may be a necessity but they are not an unmixed blessing. They may err either by exceeding the bounds of specific legal powers or simply by abusing their discretion. Of course, when they do err, this is usually not because they are evil

> men. More often, it is because of lack of information, bad advice, excess of politics, or sheer wrongheadedness. (Summers, 1972)

That same author also pointed out that in the United states, the president is usually a lawyer, as are most state governors. Generally, more than 50% of congressmen and state legislators are lawyers. Most heads of administrative agencies are lawyers. Finally, and of particular interest to this study, almost all judges are lawyers. The implication of this seems clear. Knowing how lawyers and judges behave could be extremely valuable to an administrator who might have to deal with them on their own turf. With this in mind, the strategies of attorneys who specialize in police misconduct litigation will be carefully examined and presented so that the reader can more fully understand this aspect of our adversarial justice system.

For instance, the National Lawyers Guild, and other publishers, produce a considerable body of literature on the subject of police misconduct and civil rights litigation. The dozens of books available on these subjects have two things in common: (1) they are all written and marketed as tools for plaintiff's attorneys to increase their chances of winning their cases, and (2) they instruct the reader in the past behavior of the courts and current trends in judicial decision making. In other words, they explain the rules of the game, then present specific strategies for winning.

After reading this work, the practitioner will be able to evaluate use of force policies and procedures in the same manner as plaintiff's attorneys or, more importantly, the courts, to determine which offer the greatest likelihood of success in the field with the least amount of risk in court. Doing so should facilitate the selection of those policies and procedures which are most in keeping with the mandate of the agency. This, in turn, will allow the administrator to avoid, or discard altogether, those policies and procedures likely to be indefensible when reviewed by higher authority.

An example of how the findings of this study could be used is as follows: Suppose an administrator is called by a disgruntled citizen regarding a use of force incident. After investigating the citizen's allegations he finds that force was, in fact, used but it is unclear whether the force was excessive under the circumstances. The city attorney advises the city to settle the case out of court but the city council is reluctant to admit that the city is at fault. The council asks the administrator for advice in the decision to settle since he is also named in the suit. Questions to which the administrator might want answers are:

How does this case compare with others?

How have similar cases been decided in the past?

Is this particular federal circuit more

plaintiff oriented or more likely to hold in favor of the government?

What types of cases are most likely to be affirmed or reversed on appeal?

What guidelines or admonishments have the courts handed down in past opinions which should be considered in this decision?

What impact is expert testimony likely to have on the outcome of the suit?

Clearly, there will be more questions, however, answers to these and others will be readily available to the reader here and will save many hours of research. Most importantly, the administrator will be able to quickly survey the past behavior of the courts and use the information in a more timely fashion.

Thinking more proactively, an administrator could utilize the information presented here as part of the regular policy formulation and goal setting process recommended by Whisenand and Rush (1988, p. 172). As these authors point out: "If you want to know what a police department's real objectives are, closely observe what members of the organization actually do. It is behavior that counts."

This applies to the agency as well as to the courts who will be second guessing what members of the agency have done. If one observes that the court wants to see specific types of training, then the administrator would be wise to implement and document those types of training programs. If the administrator observes that the courts are painfully unforgiving of inadequate

selection processes, then the prudent administrator should find out which agencies have been litigated for inadequate supervision, which ones have lost (and why?) and which ones have successfully defended their programs (and again, why?).

Since each new case has at least some impact on all similar cases that follow and may have profound impact if it raises a new issue or argument, the administrator must regularly and frequently evaluate the agency's policies and make decision about alternative means to address any potential problems discovered. Those decisions are decisions to which the administrator, and possibly the agency, will be held liable. According to Gottfredson and Gottfredson (1980), improving decision making must be an ongoing evolutionary process since sound management policy dictates that decisions should contribute to future decisions by helping to make those future decisions easier to make.

This study is presented as a tool to enhance the process of rational decision making by assembling important facts about the behaviors of key actors in the system. The reader is encouraged to use these facts to weigh alternatives available in the administrator's own environment prior to the administrator becoming a fact case personally.

CHAPTER 2

EXTANT LITERATURE

Introduction

By social science standards, a substantial literature has accumulated regarding the use of force. Despite this development, few solid conclusions or inferences can be drawn from extant studies. One explanation is that various studies define force in different ways, which precludes their findings from being cumulative. Another is that some studies focus on "deadly force" while others focus on "non-lethal" or "less than deadly force". Unfortunately, there is no clearly defined line, either in medicine or the law, which separates "deadly" from "non-deadly" force

What begins as a grab or a shove may well result in a fall and a serious injury or death. A slight blow, intended to stun and thereby gain control, can result in crippling or even killing the suspect. Intent is a mental process and has absolutely no influence on physics or physiology.

An additional impediment to the collection of data is that research tends to focus on what has "not worked", since incidents which caused no harm are seldom reviewed (Sherman, 1980). Good science requires that a representative sample of incidents be examined rather

than a clearly biased sample of only those that went wrong.

Frequently, data drawn from such samples, are used to make political and policy decisions, as when Congressman John P. Conyers (1980), Chairman of the House Judiciary Committee, made a statement during hearings on the subject. He stated that " Each year in the United States, between 100 and 125 police officers are killed by civilians, but about three times that many civilians are killed by police." This statement fails to consider the data in light of the total number of police citizen contacts.

Still another obstacle is the tendency of the observers, as well as practitioners, to evaluate the use of force in terms of questionable indicators such as speed of incapacitation, ease of application, duration of effect, and extent of injury caused (Schultz, 1985).

Related Literature

A closely associated literature, which has grown considerably larger than that dealing directly with the use of force, is research associated with the effects of education on police performance. Although it suffers the same problems as the studies on force, it indicates that there is a consensus among researchers that "attitudes" are important enough to be examined in any comprehensive study of police performance. As Worden

points out:

> The principle exception to the rule of null findings concerns officers attitudes toward legal restrictions on use of police authority. College educated officers appear to be more amenable (or less hostile) to restrictions imposed by the courts.

To the misfortune of the researcher, however, is the fact that attitudes are difficult to control for in a scientific study. Once again, achieving a consensus on the nature and effects of attitudes is elusive (Kalinich and Pitcher, 1984.; Fay, 1988; Whisenand and Rush, 1988; Muir, 1977).

Although the use of force gets considerable attention in the popular media, it is only one of many tasks associated with law enforcement, corrections, and security. Information on how often officers perform individual tasks is available, but examinations of how well they are performed are particularly scarce (McCampbell, 1986).

An additional complication for evaluation is the fact that no consensus exists as to what is "good" or "bad" performance. Style and attitude are often as much in question as is technique (Broderick, 1987).

The literature on ethics and police deviance is growing as quickly as any other area of criminal justice research, but again, areas of focus are so diverse that little consensus can be established other than that police and corrections officers should be more ethical

(Presidents Commission on Law Enforcement and the Administration of Justice, 1967).

Legal Literature

The nearest approximation to consensus comes from the legal profession, more specifically, from those who specialize in police misconduct litigation. Their focus is on winning their client's case. If this is not possible, the focus shifts to pressuring the government, or its agent, into as large a cash settlement as possible.

One widely used book, written specifically to guide attorneys through a police misconduct case, clearly indicates the orientation of such literature.

> We have attempted to present the subject matter in the format most useful to the practitioner who has been retained to file damage actions for police misconduct. In many cases, money damages are not adequate to remedy the constitutional violation; an injunction or declaratory relief is necessary to insure full protection of constitutional rights. The Supreme Court has placed substantial restrictions on equitable relief in civil rights cases, but with careful preparation, systematic violations of rights can be remedied. (Avery & Rudovsky, 1988)

The subject matter discussed above is primarily case law or how the courts have handled such cases in the past and how to take best advantage of the rules of law to win the case. All strategies and tactics are discussed from the position that the best strategy is the one that wins.

This is a sharp contrast to traditional police literature, the authors of which, seem to be divided into innumerable "camps" on virtually any issue from type of weapon to carry to the amount of education/training required (Carter & Sapp,1988; Carter, Embert, Payne, 1987; Brady, 1983).

It is possible that the greatest impedance to those who seek to establish some standard or continuity in the use of force comes from the Supreme Court itself. As Avery & Rudovsky put it:

> Other than in deadly force cases, The Supreme Court has never addressed the question of the appropriate definition of excessive force by police officers against citizens at liberty. However, the Court has addressed the question of the use of force in the prison context, under an Eighth Amendment analysis (Police Misconduct pp. 2-23).

For some reason, police officers are reluctant to recognize that the moment they detain a suspect, they become "custody officers". There is a longstanding tradition in many law enforcement agencies that the "best" officers are assigned to road patrol duties (doing "real police work") and the less capable personnel, or those being disciplined, are assigned to custody work in the jail or lock-up (Kalinich, and Embert, 1987). Although there seems to be some erosion of this tradition, it is still quite common and contributes to liability problems because officers from

the two different "camps" do not share information. Each group fails to see the need to study the law regarding responsibilities of the other (Embert and Kalinich, 1988).

Perpetuating this situation, are the many scholars and police management theorists who have published police management and administration texts from a variety of approaches which often seem at odds with one another (Roberg & Kuykendall, 1990). It is hoped that this work will provide a common reference point that all actors in the system can utilize for the common good of all concerned.

Summary

The works cited above represent a brief sample of the literature as background to assist the reader in understanding the thrust of this study. For the reader's convenience, a more detailed discussion of selected works is incorporated with the discussion found in chapter 4.

CHAPTER 3

DESIGN OF THE STUDY

Introduction

In this study, the literature and case law regarding the use of force are examined to find those types of cases which most frequently result in a determination of police liability and a subsequent award of damages. As Carter (1984) writes:

> While various litigious alternatives are available to persons seeking redress for police misconduct, the most common avenue employed is a civil action for the deprivation of civil rights under 42 U.S.C. 1983.

With this in mind, those cases which deal with civil liability, as determined by 42 U.S.C. 1983, as well as others which have questioned the constitutionality or legality of the government's use of force, will be the focus of this study. More specifically, the seven issues commonly contested in 1983 cases, selection, training, assignment, entrustment, supervision, retention, and direction, will be studied to determine how frequently they are named as unacceptable to the Court.

A number of tables are used to illustrate patterns of behavior found in the decisions of the courts. The

tables enable the reader to quickly observe any clusters of holdings which might be useful in formulating policies or deciding on most appropriate procedures.

Cases examined are those which have been decided by the U.S. Supreme Court or have been cited as "leading" by that court, or which have been decided by a U.S. Court of Appeals and not reviewed by the high court. These cases are selected because they set the limits of acceptable conduct for agents of social control, and lower courts must generally follow the guidelines established by the higher court (Samaha, 1988).

Certainly, there are other variables which could influence whether a particular act is ultimately determined to be constitutional. The relative skill of opposing attorneys, financial resources of adversaries, deaths of witnesses, and public outcry can all have significant impact on the outcome of litigation. No attempt is made to control for these variables other than to discuss them in the summary and conclusion portions of this article.

What is important for the reader to recognize is that this is not an experiment to find out what will happen. Rather, it is an examination of what has already happened and how those results can be applied to future decisions and actions.

Measures

Measures of the effectiveness of police procedures, are rather simple. If the court found the agency liable, or found the agency not liable but admonished it for its actions, then the police decisions regarding the use of force were bad decisions. If the court found the agency to be not liable, then the decisions regarding the use of force were good decisions. The cases will be examined for indications of what, in particular, the court found lacking or admonished the agency to change.

Clearly, many instances of governmental abuse of authority will go unexamined by this approach, but the cases which the court tends to see as most important will likely be represented, and it is with the court's opinion that the agency must ultimately comply.

Analysis

Seven basic causes of action will be examined in light of the Court's own decisions and statements. These are:

Negligent Selection

Negligent Failure to Train

Negligent Assignment

Negligent Entrustment

Negligent Supervision

Negligent Failure to Direct

Negligent Retention (del Carmen, 1986).

Since the court often relies on the testimony of expert witnesses to provide guidance in areas where the court deems itself to be unqualified, the opinions of authorities will also be presented for the reader's consideration.

Summary

This study examines and describes the past behaviors of the court in its review of the behaviors of government agents with regard to the use of force. It uses damage awards as a measure of the magnitude of government error and as an indicator of where change in policy is necessary.

CHAPTER 4

DISCUSSION

In keeping with the intent of this paper, discussion of the findings will be as straightforward as possible and will begin by examining the seven causes of action in the order presented in chapter three. Figure 4.1 presents the causes of action and the frequency with which each was addressed in the sample.

Causes of Action	Total Number of Cases
Selection	7
Training	82
Assignment	0
Entrustment	1
Supervision	58
Direction	60
Retention	10
Excessive force only	50

Figure 4.1 Distribution Of Cases By Cause Of Action

Selection

Of the two hundred cases examined in this study, only

seven mentioned the selection process as an issue. At first glance, this might seem surprising since the literature is replete with advice urging the raising of selection standards (Broderick, 1990). Of the seven selection cases examined, five were decided in favor of the plaintiff. Arguably, with such a small sample it is somewhat risky to make projections; however, if that is representative of the position of the courts on the importance of selection, it warrants further examination.

In an attempt to understand why the selection issue was not raised more often, the dicta from the individual cases were studied in search of key phrases or ideas which might shed some light on the subject. The cases revealed a consistent pattern of linking selection and training together almost as if they were inseparable words. Only one case, Parker v. Williams, 862 F.2d 1471 (11th Cir.1989) treated selection as a separate issue. That case involved a sheriff's deputy, charged with rape, who had been hired despite the sheriff's knowledge that the deputy had a previous conviction for indecent exposure.

A further search of other literature reveals that recent treatment of the selection process tends to target problems other than misconduct after employment. Generally, they deal with affirmative action and community relations and how to recruit and retain more

qualified minority and women candidates from the community served(Browdy, 1984), (Los Angeles Times, Dec. 29, 1985), (U.S. Commission on Civil Rights concerning the Detroit Police Department's racial quotas for promotions, 1984).

It may be that there is a tendency for most observers to naturally associate selection with affirmative action and other fair employment practices because that is how it is most often presented in the literature and in the media (Stahl and Staufenberger, 1974). It would seem imprudent to assume that the actors in the justice system are any less susceptible to the tendency to think in established patterns than the rest of the population (Albrecht, 1982).

Another explanation of this focus on equal employment opportunity issues might be the fact that these considerations are required by law. Title VII of the Civil Rights Act of 1964 was amended by Congress in 1972 charging the Equal Employment Opportunity Commission (EEOC) with the responsibility for administering its provisions (Swanson, Territo, and Taylor, 1988). In essence, Title VII made impermissible discrimination in employment decisions unlawful. "Impermissible" meant based on race, sex, color, religion, or national origin. "Employment decisions" included those involving hiring, promotion, demotion, transfer, and layoff. The law clearly described bona fide occupational qualifications

(BFOQ), and laid down strict guidelines for their utilization by employers. Most importantly from the perspective of this study, it created an agency whose sole purpose was to ensure that all employment (selection) decisions were made in accordance with Title VII. That placed the full power and resources of the federal government on one side of an argument over an employment decision, and left the resources of the employer on the other. Clearly this placed tremendous pressure on the employer to be able to justify each and every employment decision on the basis of Title VII guidelines.

Although the intent of the law was to eliminate unfair labor practices, it also had the collateral effect of preventing personnel managers from making such decisions based on less articulable reasons such as the manager's experience in training persons with certain behavior characteristics. In other words, if an experienced police administrator is interviewing a potential employee and he simply feels uncomfortable about how the applicant would perform, or doubts the sincerity of the applicant's answers, the administrator may be forced to hire the applicant or face the expensive process of justifying the decision not to hire to the EEOC (Condon, 1986).

Condon provides employers a list of questions which must be avoided in the interview because as he puts it:

"It is important to avoid even the appearance of discrimination. That means you must not ask questions in interviews or on application forms whose answers "might ever be used to discriminate." It seems obvious that eliminating questions which "might ever" be used to make improper decisions eliminates a long list of questions which also might be justifiable in the interest of screening out potentially unsuitable or dangerous candidates.

Title VII has been interpreted by the EEOC and the courts as providing employers a bit more latitude when hiring for positions "requiring a special degree of trust and reliability" (Condon, p.106), which would include police officers, but it is also clear that selection questions should only apply to the job applied for and not to a job to which the applicant might be promoted some time in the future. In other words an applicant cannot be screened out of a patrol officer position because he lacks the skills or higher standards of personal integrity expected of a good sergeant. The human resources manager, under these circumstances, is strongly encouraged to consider candidates that would otherwise be screened out earlier in the process, which raises the overall expense of the process, and to hire those they would otherwise not have been hired.

Another factor contributing to the self-evident neglect of the selection process by both the agencies

and the courts is the apparent cost of the process compared to the perceived benefit to the agency. As one recent text on police management describes the process: "The basic considerations are who you want to reach and the dollar cost per sworn-in recruit." (Thibault, Lynch, and McBride, 1990).

Since Title VII limits the types of questions an employer may ask, it places a heavier burden on the background investigators to screen out unsuitable applicants. Still, most writers on the subject recognize that not all agencies can afford to staff a full-time background investigations section (Thibault, et al, 1990). This places further constraints on the amount of effort committed to the process. Despite this recognition, even the police community itself continues to call for more stringent selection criteria.

The Commission on Accreditation for Law Enforcement Agencies Incorporated (1984), published a standards manual which established requirements for accreditation. The selection process and the background investigation were listed as "mandatory" for all agencies regardless of size. This places the agency in the position of being subject to two types of dependence, as described by Solomon and Gardiner (1973), the normative influence of the Commission on Accreditation, and the legal-authoritative influence of the EEOC. While the commission on accreditation and

other police organizations may wish to see more stringent standards of selection, it is the EEOC that can back up its influence with the force of law. The choice for the agency is clear. If one is to err, one should err on the side of the EEOC, even if that means running the risk of hiring a few more individuals who prove to be unsuitable later on.

The final variable influencing the ambivalence associated with selection is the fact that the entire process is rife with technical uncertainty. The diversity of missions, political influences, local and constitutional legal requirements, and the chief executives' preferences make it difficult to make generalized statements about what the personnel selection process entails or for what a personnel unit is responsible (Territo, Swanson, and Chamelin, 1977). Although some agreement may be found in the literature as to what basic functions must be accomplished, there is little guidance or consensus on how to accomplish those goals or what specific techniques are effective. Even the order in which the various steps should accomplished is the subject of some debate, with the most commonly accepted solution being "that phases should proceed from the least expensive to the most expensive (Territo et al, 1977).

More importantly, the validity of the various testing instruments is constantly under attack (Swanson, et al,

1988). A whole host of commercial entrepreneurs have moved into the evermore lucrative personnel selection business. These private enterprises market various means of screening candidates for employment and provide everything from training in interviewing skills, which purports to help agency personnel detect untruthful responses in the interview, to written examinations which claim to meet all EEOC requirements of cultural neutrality and validity, to highly sophisticated hardware which operators contend can test for truthfulness, physical conditioning and coordination, reaction time, and psychological suitability for the job (Territo et al, 1977).

Since most of the technology is still relatively new, there are few established standards for plaintiffs' attorneys to submit as evidence against an agency in support of a charge of negligent selection. As the technology becomes more commonly used and accepted, it is likely that hardware and software will gradually earn increased credibility in the eyes of the court. In the meantime, it behooves the administrator to keep abreast of developments in the emerging science of personnel selection because it is probably only a matter of time before that personnel manager will be told by the court that the decision maker "knew or should have known" that there was available a more reliable method of screening out unsuitable applicants.

Once again, the score on selection cases at this writing is 5 to 2 in favor of the plaintiff. That means the police agencies lost 71 percent of the cases where selection was an issue. Only one other issue examined had a higher loss rate for the police. Though there may be some argument as to whether good cops are "born" or "made" the decisions of the courts and the supporting opinions from the literature, indicate that the importance of the selection process cannot be overemphasized.

Training

The adequate training of personnel entrusted with special responsibilities is a subject which the courts, as well as the legislature, have traditionally taken very seriously. This is evidenced by a history of stringent laws passed regarding the licensing of doctors, lawyers, aviators, and others. The courts have consistently held that they will not tolerate someone placing others at risk by performing some act which they are not qualified to perform, such as practicing medicine (Summers and Howard, 1972). In a similar vein the courts and legislature demonstrate the same type of

thinking by refusing to hold people liable for failing to perform actions for which they are not qualified (i.e. "Good Samaritan" laws). It should come as no surprise, then, that the court looks at the awesome responsibility of police and corrections officers as necessitating substantial training.

> [I]n light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy makers of the city can reasonably be said to have been deliberately indifferent to the need. (City of Canton, Ohio v. Harris, U.S. _____,____57 U.S.L.W 4270 (Feb.28, 1989)

The court goes on to state that where police "often violate constitutional rights...the need for further training must [be] plainly obvious to the city policy makers." (City of Canton, Ohio v. Harris, U.S. _____,____57 U.S.L.W 4270 (Feb.28, 1989). In this case the Court was referring to restrictions on the use of deadly force as an example which would amount to "deliberate indifference" if the city failed to train adequately. According to Avery and Rudovski (1989), the above opinion "provides a workable framework for litigating failure-to-train or failure-to-discipline cases."

Training was the single most commonly stated cause of action in the 200 cases examined in this study with a total of 82. Fifty nine per cent of those cases (48)

were decided in favor of the plaintiff, while Forty one percent (34) were decided for the government. Although this seems like a much better balance of results, the sheer number of cases which charge negligent or inadequate training should make it obvious that training is an important issue in the eyes of the court. That data coupled with the above quoted passage from City of Canton, Ohio v. Harris, should spur even the most reluctant observer to consider adequate training essential to survival in a court of law if not on the street.

Consensus on the general need for more and better training is fairly common in the literature. Police agencies in this country, and others, have a long and rich history of providing some sort of specialized training in preparation for a police career (Reith, 1975). Where expert opinions tend to diverge seems to be where the term "adequate" is applied. This is especially so when the word adequate is associated with some objective standard which can be used by the court to determine when certain types or amounts of training "were inadequate". Historically, this country has seen an extraordinary diversity of opinions on how much training is enough for police officers. As long ago as 1917, writers described a variety of training approaches in various departments. Among them was found a program taking three years to complete as part of a work-as-you

go curriculum including physics, chemistry, biology, physiology, anatomy, anthropology, criminal psychology, psychiatry, theoretical and applied criminology, police organization and administration police practice and procedure, microbiology, microanalysis, public health, first aid, and elementary and criminal law (Fosdick, 1969). At the other end of the scale most departments of the day saw no reason to provide any training.

Even recent history shows a comparable diversity. In a study (McManus, 1970) funded by the Law Enforcement Assistance Administration (LEAA), training programs in this country ranged from 120 total hours in Kalamazoo Michigan, to 1,085 hours in Chicago Illinois.

More recent literature tends to emphasize the importance of substance over duration of training but time in the classroom remains the most easily quantified variable and, therefore, the easiest for triers of fact to understand and compare. This comparison is what the court must do in conjunction with considering the opinions of the experts. The more easily a subject is reduced to numbers, the more easily it can be compared with the numbers of other agencies by someone who is not personally an expert. It is at this point that established standards are most likely to factor into the court's holding.

In the absence of any established standard, the magnitude of the difference between what is seen in

other similar agencies and what is found in the defendant agency will often determine the decision of the court. In Hand v. Dayton-Hudson 775 F.2d 757 (6th Cir. 1985) the court noted that while other agencies in the same federal circuit were requiring as much as 480 hours of preservice training for law enforcement officers, the agency in question required none. Of the 40 hours of on-the-job training that was required, none of the training received by the defendant officer dealt with arrest procedures or treatment of arrested persons. The court, in finding for the plaintiff, reasoned that the city's failure to train its officers created the requisite causal relationship between the city's neglect and the officer's unconstitutional behavior. The end result was an award of $82,000.00 in compensatory and punitive damages against the city. Similarly, another court stated in unmistakable language that the evidence before the court indicated that the circumstances of the shooting in question were "so outrageous as to indicate training and supervision of the officer must have been inadequate." (City of Oklahoma City v. Tuttle 471 U.S. 808, 105 S.Ct. 2427 (1985) Considering the court's historical reluctance to make inferences, that is a strong statement indeed.

For the police administrator seeking guidance from the courts, there is a fundamental problem in that he will never be certain whether his training programs were

accurate until it is too late. The reason being that the courts will always evaluate the training of the officer "after the fact", after something has gone wrong, after someone has been harmed. Never will the training be evaluated by the court before the fact. There are a number of reasons for this. First, there is no reason in the law for the court to be involved in the functions of the executive branch. To do so would be a violation of the separation of powers required by The Constitution of the United States (Lieberman 1968). A second constraint on the ability of the court to evaluate training before the fact comes from Article III of the Constitution itself. In essence it states that Supreme Court may interpret the Constitution only within the framework of a "case or controversy". What this means, for the criminal justice administrator, is that court will not give advisory opinions on any constitutional issue (Felkenes, 1988). The only way the administrator will know for sure how his training program compares with the opinions and expectations of the court is for a citizen to allege harm, bring suit, and be granted a trial.

There are a few states which permit their supreme courts to give opinions on state laws under consideration or to comment on their constitutionality under the constitution of that state. This is justified as a means of saving time and money by not enacting laws

that would later be ruled unconstitutional (Felkenes, 1988).

Third, the "standing to sue doctrine" used in federal court provides that until such time as the plaintiff can show that the conduct complained of "invades or will invade a private substantive legally protected interest of plaintiff citizen" there is "no justicable controversy" (Associated Industries of New York State v. Ickes). In other words, the court can't hear it because it hasn't happened yet.

This leaves the administrator with three sources of advice on the constitutionality of and decision under consideration: 1) clearly settled case law, which may require a considerable amount of expertise to interpret, 2) opinions of attorneys and other experts which may be (and probably will be) conflicting leaving the administrator in the same position minus the consulting fee, and 3) Attorney General Opinions.

Attorney General Opinions are published by the attorneys general of the United States and the individual states to interpret particular statutes or to provide other types of legal advice to government officials. While it is true that these opinions can be found in the annotations included in annotated versions of federal and state statutory codes, and it is also true that various courts may use such opinions as persuasive authority for deciding legal issues with

which the opinions have dealt, it must be remembered that attorney general opinions are not binding on any court (Wren and Wren, 1984). It must also be remembered that the attorney general in question will be an expert in the law, but it is unlikely that he will have similar expertise in training or other specialized areas of police work. If one turns to the case law available, most administrators immediately encounter a number of difficulties involving access to the specific information needed. Among these difficulties are: availability of a complete law library, expertise in finding the law, expertise in interpreting the law, and time to accomplish the previous three. This study does not intend to address the resolution of these problems. Rather, they are pointed out for the reader's benefit to assist in recognizing the importance of working proactively by cultivating the appropriate expertise, either personally or through the ubiquitous "rolledex".

Expert testimony is an accepted fact of life for virtually any case involving specialized knowledge with which the average juror is unlikely to be familiar. Under Rule 702 of the Federal Rules of Evidence, expert testimony is provided for as follows: If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or

education, may testify thereto in the form of an opinion or otherwise. Clearly the rule is recognizing the necessity of using experts to assist the trier of fact in evaluating the importance of evidence presented and the interrelationships of the facts. But the courts and trial lawyers also recognize the potential for misuse of these experts. While training cases such as City of Oaklahoma City v. Tuttle, 471 U.S.808, 105 S. Ct. 2427, 2430 (1985) turn almost exclusively on expert testimony it is also readily apparent that there are experts on both sides of the issue and the case may not be decided on the merits of the case but on the adversarial skills of the attorneys. As Avery and Rudovsky (1989) write:

> Preparation of the expert testimony prior to trial is the key to a successful presentation at trial. Counsel must take the same care in preparing a police expert to testify that she would take with any other scientific or technical witness. The expert should be completely familiarized with all of the facts and circumstances of the case prior to testifying. Counsel should be particularly at pains to bring to the attention of the expert all of the evidence upon which her opponents intend to rely at trial. An expert opinion which is based on a partial view of the evidence or entirely on one party's version of the facts is only of limited value. On the other hand, it is particularly devastating if the expert can render an opinion based on the opponent's version of the facts.

The above advice seems especially sound in light of cases such as Young v. City of Killeen, Texas, 775 F.2d 1349 (5th Cir. 1985) where the expert witness was shown a slide photograph of the scene of the event in

question. Then, based solely on the officers version of what happened, the expert was able to render an opinion favorable to the plaintiff. In that instance, the expert's opinion was based on four separate issues:

1) Threat to the officer; he was protected by his vehicle and had no need to fire.
2) Effectiveness of the chosen method; he was too far away to assure an accurate shot.
3) Risk to third parties; the residential character of the area made danger to third parties unacceptably high.
4) Alternatives available; other means for apprehending the suspect were available to the officer at the time.

Based on the testimony of the expert, a substantial award was granted to the plaintiff and defendants' appeal was denied without opinion (See also Parker v. District of Columbia, 850 F.2d 708, D.C. Cir. 1988., Warren v. Lincoln, 816 F.2d 1254, 6th Cir.1987).

Another factor used by the court in this comparison process is the number of areas where training is deficient. There may be no single area which is grossly different from other agencies, but if the court sees significant deficiencies in a "multitude of areas", the reasoning is that also demonstrates deliberate

indifference to the obvious training needs of the officers. This occurred in Wierstak v. Heffernan, 789 F.2d 968 (1st Cir. 1986) where the city failed to "adequately train" on firearms, high-speed chases, roadblocks, the need for force in arrest situations, and the need to inspect injured prisoners.

In view of the historical information presented above, the expert opinions from the literature, and the decisions of the court examined in the study, it seems clear that in the eyes of the courts, the need for training of police officers is "obvious" and may be one of the most important of the issues examined.

Assignment

The literature used elsewhere in this study rarely mentions negligent or improper assignment as either an issue or a cause of action. The reader, however, should be cautioned that this should not be taken as an indication that assignment is unimportant to the courts. The method of selection used in this study did not attempt to achieve a balance of cases based on cause of action. Rather, the cases were selected in a attempt to assemble those cases most often cited by attorneys and authorities from both sides of the use of force issue. The resultant paucity of certain types of cases

indicates only that they did not happen to appear in the sample selected for this study.

The Commission on Accreditation does consider the issue of assignment in its requirements for accreditation. There are three stated requirements but only two of them are mandatory. Of the mandatory requirements, one requires "a written directive" advertising openings for special assignments be circulated agencywide. The other requires that the qualifications for any assignment within a position classification be made clearly known to agency personnel, and should be based on skills, knowledge, and abilities required for the assignment.

It is obvious that the intent of these requirements is to address fair employment issues rather than issues involving potential risk to the public from poor assignment practices. Still, del Carmen (1986) writes, "The rule is that a supervisor has an affirmative duty not to assign or leave a subordinate in a position for which he is unfit." del Carmen also provides the following example. After numerous disciplinary reports regarding a particular officer were brought to a supervisors attention and no action taken to transfer the officer to a non-sensitive assignment, the supervisor was held vicariously liable. Five separate misconduct reports in a two week period coupled with other warnings that the officer had been involved in a

series of acts demonstrating mental instability was too much for the court to accept. The court held that the supervisor was liable because he knew of the problems, had the authority to assign or suspend, but neglected to do so (Moon v. Winfield, 383 F. Supp. 31 (N.D. Ill. 1974)

If one assumes that a lack of representation of assignment cases in this study indicates a lack of risk of agency, then one is not recognizing the more likely possibility that plaintiff's attorneys are filing cases under other causes of action that are simply more established in the law such as negligent failure to train or negligent failure to supervise. The administrator who ignores the assignment process in formulating policy or evaluating procedure ignores the fact that courts are very sympathetic to plaintiffs' need for information about all factors which might have relevance to the event in question. Rule 26(b) (1) of the Federal Rules of Civil Procedure defines relevance very loosely:

> It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

This defiantly indicates that information about the assignment process is discoverable which could easily lead to the agency defending a series of decisions leading up to the assignment of the officer in

question. Each decision questioned is one more opportunity to establish unsound or negligent behavior. So, although the case law in this study did not indicate that assignment was a major concern, it would be unwise to ignore the advice of the literature.

Entrustment

Much like the previous section on assignment, only one entrustment case appeared in the sample of cases studied. Unfortunately, even that one dealt with a sheriff who entrusted a trustee with a fully equipped and marked patrol vehicle. The trustee used the vehicle to stop a female motorist and murdered her (Nishiyama v. Dickson County, Tenn, 814 F.2d 277, 6th Cir. 1987). The sheriff was held liable for the death under Section 1983.

This case might have been more useful if it had not presented such clearly outrageous conduct on the part of the sheriff. Had it been a police recruit or even a civilian employee, there would have been opportunity to examine what reasonable steps the sheriff could have taken to prevent harm to the public from unauthorized use of police equipment.

The Standards Manual of the Commission on Accreditation for Law Enforcement Agencies makes no

mention of unofficial use of police equipment. Policies vary from agency to agency regarding off duty use of police equipment.

It would be safe to say that most police departments allow, and many require, their officers to carry their firearms off-duty. These firearms are often department property. Similarly, many agencies allow their officers to drive their patrol vehicles to and from work and some may be used for personal errands. This practice is often defended as a fringe benefit for the officer and a bonus for the agency since it increases police "visibility". There are some agencies which go so far as to allow their officers to take off duty employment as private security officers and authorize them to wear their regular uniforms badges and firearms, carry a department-issue radio, and drive their department-issue fully equipped and marked police motorcycle. These officers are also authorized to call on-duty police officers for back-up, if necessary, via the regular police radio net.

A number of instances of abuse and misconduct can be found in the literature but the issues are generally considered under the headings of supervision or direction. There seems to be a sort of reverse "chicken and egg" situation in the law. Until more cases are brought with negligent entrustment as the cause of action, there will not be many precedents to use as

authority. Conversely, until there are more cases on the books to cite as precedents, plaintiff's attorneys will not seek relief stating negligent entrustment as a cause of action.

In the meantime, there is ample evidence in the literature by del Carmen (1986) and others to indicate that there is a substantial body of entrustment case law not reflected in the sample used here. The reader is cautioned to reorganize the limitations of this study and to consider all of the case law along with the relevant literature.

Supervision

Supervision was the third most frequently cited cause of action in the cases examined. Fifty-seven of the two hundred cases in the sample, or nearly thirty percent, charged some form of negligent or inadequate supervision. It is shown in Figure 4.2 that fifty-eight percent of the supervision cases were decided in favor of the plaintiff and forty-two percent were decided for the government.

Issue	Decided for Plaintiff No.	%	Decided for Government No.	%
Selection	5	71%	2	29%
Training	48	59%	34	41%
Assignment	0		0	
Entrustment	1	100%	0	
Supervision	33	58%	24	42%
Retention	9	90%	1	10%
Direction	42	59%	28	41%
Immunity	8	42%	11	58%
Force only	32	67%	16	33%

Figure 4.2 Distribution of Cases By Prevailing Party

There is probably no subject in police administration, with the possible exception of policy and direction, which has generated as much literature as supervision. This is probably because experts from so many different disciplines such as psychology, business administration, political science and sociology, feel comfortable giving advice on the subject.

There are many similarities between supervision of

police personnel and personnel in other occupations. It is probably safe to say that there are more similarities than differences. This position is fully supported by the number of police executives with degrees in business, psychology, management and industrial labor relations, education, social work, urban planning, and even criminal justice. Additionally,most government, sponsor management and supervision seminars where the administrators of virtually all agencies are encouraged, if not required, to attend.

The commonality of certain aspects of supervision is universally accepted (Kolfas, Stojkovic, and Kalinich, 1990). For the purposes of this study, however, it is more useful to focus on the peculiarities rather than the similarities. There is one aspect of law enforcement and corrections supervision that is unique, the fact that the employees of the agency supervised are paid to exercise coercive power over other citizens.

If one is to conduct a meaningful examination of the constitutional source of this coercive power, it is useful to look beyond the Constitution itself and consider the intent of the men who wrote it.

The framers of the constitution are often portrayed in popular history as wise old men setting up a new government reflecting the will of the people. Along the same lines, many police officers and executives perceive themselves as the constitutionally mandated enforcement

arm of the government which was established to protect the citizens from the forces of evil, "the thin blue line".

A more objective examination of history reveals the authors of the Declaration of Independence who substantially became the framers of the Constitution "hardly represented the people of the colonies". Instead, they were the most radical and revolutionary inhabitants of the colonies drawn from various patriotic groups (Felkenes, 1988). They were assembled several times and the participants changed as some saw the proposed actions as too radical and left while others were drawn in by the new ideas. This group's first order of business was not to draft the noble document which would last through the ages, but to marshal support for the revolution and provide for the common defense. Once they had published enough papers and given enough rallying speeches to feel confident that enough of the people had been won over to finance a revolution, the Declaration of Independence could be written and published. This final rational justification for going to war became the rallying point for the revolution (Felkenes).

What is important for the criminal justice professional to remember is that by the time the framers got around to writing the 4,000 word constitution itself and the 2,500 words that make up the amendments, they

had just fought a long and particularly bloody war to rid themselves and their posterity of a heavy handed government in which they had been denied meaningful participation. They had looked at all other known forms of government in the world and found none which did not regularly allow the abuse of the governed. They looked among themselves and found no one they were willing to trust with the unfettered power of the government. Their answer to the question of "What now?" was a government that would always be at a disadvantage when dealing with an individual citizen.

The Constitution was created to protect the citizen from the government. The resulting system was based on the presumption that the citizen was innocent or "the good guy" while the government was the "bad guy" who could not be trusted and must prove all accusations beyond a reasonable doubt (Lieberman, 1968). As an indication of the wariness displayed by the courts toward the government, consider the following:

> When a tort is made possible only through the abuse of power granted by the government, then the government should be held accountable for the abuse, whether it is neglect or intentional in character. Accordingly, we reject the suggestion that the district is immune from suit for the intentional torts of its employees." Carter v. Carlson, 447 f. 2d 358 (D.C. Cir. 1971), rev'd on other grounds sub nom.

The court emphasized its opinion by declaring that Washington D.C. was "even more subject to liability" than other cities because it was under complete

legislative jurisdiction of the U.S. Congress. One can easily infer, from this declaration, that of all actors involved, the courts trust the government the least.

With this in mind, it is much easier to understand why the court seems to treat the testifying police officer as the "bad guy" in a criminal trial. The officer represents the government so the court should be wary of anything the officer says absent reliable proof obtained in a lawful manner. The officer should not look at an acquittal as a criminal "getting off on a technicality." Such an occurrence should be perceived as the government failing to provide the court with adequate evidence, within the law, of criminal activity. The judge who seems to be protecting the criminals is doing exactly what the Constitution mandates. The jury who seems to be always on the side of the accused is behaving exactly as the framers hoped they would. They are determining issues of fact based on their evaluation of the conflicting testimony presented in court (Klein, 1986).

With regard to training, even the most fundamental tasks of the police involve complex constitutional issues. Although the Constitution is often touted as a beautifully simple document which is, as former Vice President of the United States, George M. Dallas, once wrote that the Constitution was "plain and intelligible,][meant for the homebred, unsophisticated

understandings of our fellow citizens." The fact is that the Constitution is very difficult to understand and apply (Lieberman, 1968).

Every arrest made by an officer requires interpretation of the statute, application of the statute, exercising coercive force in some degree, infringment on individual rights of the citizen guaranteed by the Bill of Rights, documentation of the events as they occurred, and presentation of the evidence in a court of law. To take any average citizen off the street and expect that citizen to be able to do so under the myriad of condidions confronting modern law enforcement is clearly ludicrous. The courts recognize this fact and hold all government agencies accountable for preparing citizens to assume this complex role as was discussed in the section dealing with training. The courts also recognize that merely training officers is not enough. As Lord Acton wrote "power tends to corrupt, and absolute power tends to corrupt absolutely." Granting police officers the power of arrest, and the absolute power of lethal force in making lawful arrests, is an enterprise not to be taken lightly. Some sort of close supervision is clearly indicated.

If one searches the sample cases for predominate concepts in the sample cases on supervision where the plaintiff prevailed, one finds knowledge and

responsibility (liability) as those most often articulated. The oldest case to do so is Roberts v. Williams, 456 F.2d 819 (5th Cir. 1972) This case stated that supervisory officers are subject to suit if they "knew or should have known" of problems, either actual or potential, and failed to intervene. That same year, in the 7th circuit, the idea of knowledge and responsibility (duty) was expanded upon when that court stated:

> We believe it is clear one who is given the badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence or otherwise within his knowledge. That responsibility obviously obtains when the nonfeasor is a supervisory officer to whose direction misfeasor officers are committed. So too, the same responsibility must exist as to nonsupervisory officers who are present at the scene of such summary punishment, for to hold otherwise would be to insulate nonsupervisory officers from liability for reasonably foreseeable consequences of the neglect of their duty to enforce laws and preserve the peace.

This holding places the responsibility for supervision and corrective action for misconduct on the supervisor as well as the supervised. The courts may want justice to be "blind" but they clearly will not tolerate blindness in justice system employees. Each actor with the power to enforce the law is expected to enforce the law in keeping with the 14th Amendment

requirement of "equal protection". The court went a step further in protecting the citizen from the actual harm caused by the abuse of police power. Rather than merely requiring the police to take remedial action such as repremanding or prosecuting an offending officer, the court plainly stated where police officers have direct knowledge that use of excessive force or police brutality is happening, the officers have a duty to come to the aid of the victim. Obviously this means to do something at the time of the event, not after the fact (Byrd v. Brishke, 466 F.2d 6, 7th Cir. 1972).

The following year, the Third Circuit used virtually identical language to place officers in that jurisdiction on notice as to their responsibility in Curtis v. Everette, 849 F.2d 516 (3rd Cir. 1973) In 1979, the 7th Circuit revisited this issue in Hampton v. Hanrahan 600 F.2d 600, 626 (7th Cir. 1979) but went even farther in that case by explaining that knowledge of such abuse of authority coupled with a failure to intervene is enough to establish a cause of action for a civil rights conspiracy. The court defined a concpiracy as a:

> combination of two or more persons acting in concert to commin an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties `to inflict a wrong against or injury upon another,' and `an overt act that results in damage.' In order to prove the existance of a civil conspiracy, a plaintiff is not required to provide direct evidence of the agreement between

> the conspirators; `[c]ircumstantial evidence may provide adequate proof of conspiracy.' Hoffman-LaRoche, Inc. v. Greenburg, 447 F. 2d 872, 875 (7th Cir. 1971). See also United States v. Varelli, 407 F.2d 735, 741-42 (7th Cir. 1969). Absent the testimony of a coconspirator, it is unlikely that direct evidence of a conspiratorial agreement will exist. Thus, the question whether an agreement exists should not be taken from the jury in a civil conspiracy case so long as there is a possibility that the jury can `infer from the circumstances' [that the alleged conspirators] had a `meeting of the minds' and thus `reached an understanding' to achieve the conspiracy's objectives. A plaintiff seeking redress need not prove that each participant in a conspiracy knew the `exact limits of the illegal plan or the identity of all the participants therein.' [] An express agreement among all the conspirators is not a necessary element of a civil conspiracy. The participants in the conspiracy must share the general conspiratorial objective, but they need not know all the details ofthe plan designed to achieve the objective or possess the same motives for desiring the intended conspiratorial result. To demon-strate the existance of a conspiratorial agreement, it simply must be shown that there was a `single plan,' the essential nature and general scope of which [was] known to each person who is to be held responsible for its consequences.

The court went on to clarify that all police and other persons who "planned or acted in concert to deprive the plaintiff of his civil rights will be subject to liability." Knowledge of abuse but failure to take action is, in effect, helping to conceal the abuse thereby aiding the abuser. This is not unlike the requirement for all citizens with knowledge of a crime to endeavor to prevent the commission of that crime,"or

having knowledge of its commission, to reveal it to the proper authorities." (Black, 1968) (See also: Ware v, Reed, 709 F.2d 345 (5th Cir. 1983)

Cases other than those in the sample have dealt with failure to report a crime as follows: "To sustain a conviction ...for misprison of a felony it was incumbent on the government to prove beyond a reasonable doubt (1) that ... the principal had committed and completed the felony alleged ... (2) that the defendant had full knowledge of that fact; (3) that he failed to notify authorities; and (4) that he took affirmative steps to conceal the crime of the principal." United States v. Stuard, 566 F.2d 1, 22 CrL 2337 (6th Cir.1977), quoting Neal v. United States 102 F.2d 643 (8th Cir. 1939) Another 1979 case from the 10th Circuit stated that a police chief may be held liable when he fails in his "Duty to correct misconduct of which he has notice" (McClelland v. Facteau, 610 F.2d 693)

To further demonstrate the courts sensitivity to the idea of police conspiring against citizens, in Lenard v. Argento, 699 F.2d 874 (7th Cir. 1983) a conspiracy judgement was sustained against the police on the theory that the defendant officers had worked in concert or "conspired" to deprive the plaintiff of his civil rights despite the fact that the same jury had held that the plaintiff had not actually been beaten or otherwise wrongfully treated.

In a Georgia case, the Federal District Court reinforced the concept of supervisors requiring supervision in McQurter v, City of Atlanta 572 F.Supp. 1401 (N.D. Ga. 1983) by finding several supervisors in the chain of command liable for the death of a victim who was choked with a flashlight while on the ground with both his hands and feet in mechanical restraints. Since they saw the officer choke the victim and failed to intervene, they were held liable. Further, the city and the commissioner of public safety were held liable because the supervisors had been negligently placed in a supervisory position without being adequately trained in the chokehold technique that was being used in the field. Without such knowledge, the court reasoned, adequate supervision was impossible. This is a case where the concepts of negligent assignment, entrustment and supervision are inextricably entwined.

Other cases in the sample require that the administrator seek the knowledge related to misconduct if he does not have it. He must investigate allegations of misconduct regardless how they come to his attention. In Marchese v. Lucas 578 F.2d 181 (6th Cir. 1985) the sheriff was held liable for an award of $125,000 over various beatings and other civil rights violations by jail officers because no serious investigation had been conducted when the allegations were made known to him

and his failure to investigate was seen as ratification of the abuse. This is similar to a later case from New York (Fiacco v. Rensselaer, 783 F.2d 319 (2nd Cir. 1986) where the court held the validity of claims by the third party was not to be used to determine admissibility, and that the chief of police, in that case, had essentially conducted "only superficial investigations" of previous complaints. In announcing its opinion, the court cautioned that "Department procedures should spell out the details for use of force rather than simply directing officers to use whatever force is reasonable and necessary." The court reasoned further that at some point, at least, the city had considered the supervision of police officers important because it had in place general procedures relating to the proper supervision of those officers. But because it had declined to implement those procedures, the city must be held liable. The court also cited the police chief's track record of non-investigation of complaints. The court instructed that a jury could rightfully find that this sort of non-investigation was, in effect, non-supervision.

Finally, The most point blank instruction the courts have handed down on this subject comes from Byrd v. Clark, 783 F.2d 1002 (11th Cir. 1986). There, the court found the city and officers liable for the injuries suffered by a female arrested for drunk driving

and beaten by officers while in custody. Citing deficiencies in poth policy and training, the court went on to say of supervision:

> If a police officer, whether supervisory or not, fails or refuses to intervene when a constitutional violation such as an unprovoked beating takes place in his presence, the officer is directly liable under section 1983. (p. 1007)

There seems little need for further discussion on the courts perception of the importance of supervision. In light of previous statements of the court it seems clear that authority will only be recognized by the court if it is linked with constantly updated knowledge of what others in authority are doing and a responsibility to take action when others abuse their authority.

Direction

The literature on direction and promulgation of policy is a large one. This study was not intended to be a comprehensive analysis of it. Instead, it seems more useful to apply some works most commonly available to administrators to the cases cited here in an attempt to reconcile any seeming inconsistencies between the theory of the authorities and the decisions of the courts.

In Barker and Carter's (1986) comprehensive book on

police misconduct, del Carmen gives the following description of negligent failure to direct:

> Negligent failure to direct means not sufficiently telling the employee of the specific requirements and proper limits of the job to be performed. In one case Ford v. Brier, 383 F. Supp. 31 N.D. Ill. 1974) the court refused to dismiss an action for illegal entry, stating that it could be the duty of a Police Chief to issue written directives specifying the conditions under which field officers can make warrantless entries into residential places. The court held that the supervisor's failure to establish policies and guidelines concerning the procurement of search warrants and the execution of various departmental operations made him vicariously liable for the accidental shooting death of a young girl by a police officer. The best defense against negligent failure to direct is a written manual of policies and procedures for departmental operations. The Manual must be accurate, legally updated, and form the basis for agency operations in theory and practice. (p.317)

The cases sampled in this study strongly reinforce the opinions expressed in the above quotation. Of the cases reviewed, 35% (70) dealt with direction (See Figure 4.2). Of those, 60% were decided in favor of the plaintiff (See figure 4.2). It is not surprising that the percentage is so close to the 58% found in the supervision cases since the tasks of supervision and direction are so closely related to one another.

As del Carmen pointed out in the above passage, failure to direct is failure to adequately tell

subordinates to do or not do something. It seems noteworthy that there is so much activity in the case law involving direction. It would seem that police administrators would be the most sensitive of all administrators to the need for thoroughness and clarity in directives. After all, the laws they are sworn to enforce must constantly withstand the of tests of "void for vagueness" (Gardner, 1989) and "overbreadth" (Zwickler v. Koota, 389 U.S. 241,250, 88S.Ct. 391,396, 1967) It would seem logical that the directives which control those who enforce the law should be held to at least as high a standard.

The decisions in the sample seem to indicate that the court is holding law enforcement agencies to just such a standard. Directives, like the law need to be promulgated before they can have any effect on behavior. Many of the cases lost by police agencies cite "failure to direct" as the error of the agency or its administrators (Black v. Stevens, 662 F.2d 181, 3rd Cir. 1981) (Brandon v Holt, 469 U.S. 464, 105 S.Ct 873 (1985). In other words, if the officer is never informed of exactly what is expected, the officer cannot be held liable for violations of directives and the attendant consequences any more than a normal citizen could for violations of statutes.

Still, when someone suffers a loss as a result of such violations, there must be a mechanism at law to

redress that harm. That is the essence of Section 1983, and the supervisor and/or the government entity will be vicariously liable (Fletcher v. O'Donnell, 867 F.2d 791 3rd. Cir. 1989)(Owen v City of Independence Mo. 445 U.S. 622.,1980).

The court recognizes in several cases that it is virtually impossible for any collection of directives to encompass all contingencies which might possibly develop in the course of an officer's shift. In Sherrod v. Berry, the en banc court instructed "objective reasonableness under the circumstances" was the proper test for whether deviation from the directives was proper, and that the jury must "stand in the shoes of the officer at the time of the shooting" basing any opinions on "what the officer knew at the time; not what was learned after the fact." (827 F.2d 195, 7th Cir. 1987)

Something significant the court seems to key on is the fact that direction takes many forms. Indeed, it takes many names being referred to variously as policy or custom (Monell v. Department of Social Services, 436 U.S. 658 , 1968), practice or acquiescence (Fletcher v. O'Donnell, 867 F.2d 791, 3rd Cir. 1989), or even a single decision which has been held to be policy if by the right person (Pembaur v. City of Cincinnati, 475 U.S. 469, 106 S.Ct. 1292,1298. 1986).

At first glance, the cases seem inconsistent as to

who is in a position to be a policy maker; the U.S. Supreme Court ruled on the issue in City of St. Louis v. Praprotnik. There the court settled not only who should be classified as a policy maker, but who should do the classification by stating:

> And certainly there can be no justification for giving a jury the discretion to determine which officials are high enough in the government that their actions can be said to represent a decision by the government itself.

The court went on to state that it is state law which will decide who is a policy maker. (108 S.Ct. 915. 1988)

Barker and Carter (1986) gathered works from a number of authors from different backgrounds all of whom had addressed the problem of police deviance. The resultant anthology is helpful in finding commonality in the suggestions of authorities with different perspectives.

In comparing the dicta from case law with the Barker and Carter book and other sources listed herein, the reader will notice that there are several threads of agreement winding their way through the literature. If one were to weave those threads of agreement into some rules governing the formulation and dissemination of policy, they might look something like the following:

(1) that direction means telling employees what to do... Brandon v. Holt, Pembaur v. City of Cincinnatti,

Dorsey v. City of Detroit

(2) telling employees what not to do..

Black v. Stevens, Fletcher v. O'Donnell, Justice v. Dennis

(3) telling employees when they can do it..

Brower v. County of Inyo, Peraza v. Delamater, Smith v. City of Fontana, Tennessee v. Garner,

(4) telling employees when they cannot do it ...

Grandstaff v. City of Borger, Smith v. Jones, Leber v. Smith

(5) telling them how much they can do...

Jones v. Marshal, Spell v. McDaniel, Dunster v. Metropolitan Dade County

(6) telling them what will happen if they fail to comply ..

Brandon v. Holt, City of Oklahoma City v. Tuttle,

(7) telling them in accordance with the law ...

Pembaur v. City of Cincinnatti, Webster v. City of Houston, Texas

(8) following through on what you told them...and

City of Rensselaer v. Fiacco, Languirand v. Hayden

(9) documenting that it was done.

Martin v. Georgia Department of Public Safety, Strauss v. City of Chicago, Thomas v. City of Zion

(10) Doing whole process again and again.

Anderson v. Roberts, McKinnon v, City of Berwin, McQurter v. City of Atlanta

With decisions addressing virtually every aspect of direction and a thoroughly enormous literature on the subject, both of which warn of liability for failure to

adequately direct it seems clear that the administrator must aggressively address direction as a priority issue.

Retention

Referring, again, to Figure 4.2, one notices that though retention is mentioned but 10 times, 9 of those times it is counted on the side of the plaintiff. This probably makes retention the best of the seven subjects to address last since it is the one most likely to be lost by the administrator. Why this is so will be examined presently, however, it might be of value to explore some of the literature regarding negligent retention for a better understanding of what is at issue.

Returning to del Carmen (as printed in Barker and Carter, 1986)

> Negligent retention means the failure to take action against an employee in the form of suspension, transfer, or terminations, when such an employee has demonstrated unsuitability for the job to a dangerous degree. The test is: was the employee unfit to be retained and did the supervisor know or should have known of the unfitness? The rule isthat a supervisor has an affirmative duty to take all necessary and proper steps to to discipline and or terminate a subordinate who is obviously unfit for service. This can be determinen either from acts of prior gross misconduct or from a series of of prior acts of lesser misconduct indicating a pattern unfitness.

del Carmen cites Brancon v. Chapman, LR #10509 (W.D. Tennessee 1981), which was not cited in this study, as an example of the type of misconduct that amounts to negligent retention. In that case an officer with a reputation for excessive force and mental problems was retained on the department despite the strong likelihood that the director knew of his behavior. As a result, the court held the director liable for injuries suffered by a couple who was assaulted by the officer. In instructing that the director should have done everything possible to prevent the assault the court clearly suggested that the burden was on the director to know what was going on in his department and to investigate every complaint thoroughly. The defense against such a suit is to prove that everything possible was done to prevent the misconduct.

Unfortunately, the obvious cure for negligent retention is to fire the employee. This is often seen as the hardest decision for police administrators to make both psychologically and practically. Though Justice Oliver Wendell Holms once wrote that no one "has a constitutional right to be a policeman", he did so in the case of McAuliff v. New Bedford, 155 Mas. 216, 220 (1892), very nearly 100 years ago. Times have changed considerably. The same Title VII which complicated the selection process discussed earlier, can make the dismissal of an employee a legal quagmire (Robbinette,

1987).

The fundamental problem in dismissing or reducing a police officer is that such an action is universally perceived as a punishment and a loss of a real and valuable property right. This being the case, the disciplined officer now moves from the position of agent of the government to victim of government action. While he may have been found liable for misconduct and assessed a penalty by the court for his actions, that same court will necessarily become his source of relief from any sanction levied by his employer.

Many states such as California have formally adopted the constitutional standard of due process for all performance-related dismissals of public employees (Skelley v. State Personnel Board, et al. 124 Cal Rptr., 14). The several states each determine the degree to which property interests attach to a job. In commenting on the leading case of Bishop v. Wood 48 L. Ed. 2d 684 (1976), Schofield writes:

> The ultimate significance of Bishop is speculative, but it does seem to reflect an approval by the court of the notion that the ultimate control of personnel relationships belongs with the state government, and that the decision by a State or local government to grant or withhold tenure is entitled to special deference by the federal courts. The question of whether there is a property interest is thus dependent on the rights to continued employment that are created by state or local law.

So even though there is no constitutional right to a

public job, once the probationary period is successfully completed and any state mandated property interest attaches, termination is tantamount to deprivation of that property right which can only be accomplished lawfully by strict adherence to substantive due process.

Such due process dismissal must stand the test of two groups of questions those that examine the administrators actions before dismissal, and those that examine the manner of dismissal. The administrator must answer the following questions:

Was the employee coached in a manner similar to other employees in like positions? Was the employee instructed in and counseled regarding any deficiencies in performance? If so, was the employee given a reasonable time period and ample opportunity to demonstrate improvement? Were other options besides dismissal explored? Does the preponderance of evidence indicate an affirmative answer to all of these questions? If dismissal was chosen, was the employee given notice and adequate explanation? Was the employee given an opportunity to rebut the allegations and to challenge the decision? Were all steps accurately documented? The ability to answer all of these questions with a "yes" is an indication of a well administered agency which will have little difficulty from the courts as some of the following cases from this study indicate.

In Pennsylvania v. Porter, 659 F.2d 306, a city police officer had established a history of abusing citizens with excessive force and verbal assaults. After repeated complaints to all those named in the suit, the officer, the chief of police, the mayor and the city council were all held liable for injuries suffered by citizens at the hands of the officer. Each actor in the chain of command was held liable for negligently retaining the actor and for failing to correct the officer's behavior.

In Schaefer v. Wilcox, 676 F.Supp. 1092 (D. Utah) Highway patrol officials were held liable for acting in a grossly negligent manner for not adequately "qualifying, hiring, training, supervising, and [for negligently] retaining" an officer who stopped and sexually assaulted female motorists.
Because of such gross negligence, the officials named were not entitled to qualified immunity (See also McKinnon v. City of Berwin, 75 F.2d 1383 7th Cir. 1984).

In Brandon v. Holt which was discussed earlier under the headings of training, supervision, and direction, one of the principle comments of the court in finding for the plaintiff was that even though the officer was known to be violently abusive, he was not dismissed because the chief had a personal policy of not firing an officer for brutality because he felt the dismissal

psychologically as a pattern of learned helplessness (Parker Meier, and Monahan, 1989), the courts clearly do not expect, nor will they tolerate helplessness in administrators.

Clearly the 10 to 1 ratio against the police and the abundant writing available on the subject, reflect a critical need for all administrators to address retention issues early on, rather than avoiding them because of the inherent difficulties they represent.

CHAPTER 5

LEARNING THEORY AND USE OF FORCE POLICY

Since the three largest groups of data, training, supervision, and direction, all deal with controlling others in some manner, discussion of some basic theories of learning and behavior as they apply to these topics is appropriate.

Classical conditioning - A certain response can be expected when a human being is subjected to a certain stimulus. When a second non-relevant stimulus is introduced coincidentally with the first stimulus, the expected response can be evoked by the second stimulus without the presence of the first. (Coleman, 1972)

Instrumental conditioning - Humans tend to repeat behavior that is satisfying to them and to avoid behavior that is not satisfying. B.F. Skinner (1953) found that behavior can be influenced by subjecting a person to stimuli that have satisfying results whenever he shows the desired response. He also found that it is not necessary to "reward" every desirable response in order to achieve the desired results.

Gestalt theory - Learning occurs through insight. The skills and attitudes acquired from previous

experiences, cause the learner to interpret the learning situation as more than a specific or isolated case. Each new learning situation blends with the whole pattern of experiences that has meaning for him personally. Learning is a process whereby arranging and rearranging past experiences, in relation to current experiences, a person is able to make sense of the world he or she perceives. (Fay, 1988)

Field theory - Similar to Gestalt theory, Field theory suggests that the learning process is wholistic in nature. That is, it is a result of the combined influences of all internal and external forces acting on the learner (Bigge, 1972)(Lewin, 1951).

5. **Phenominological theory** - Phenominological theory places emphasis on individual perception. The learner perceives the need to learn only as it relates to the way he perceives his own environment. Of particular interest to trainers is the tendency of learners to "display great ingenuity in avoiding learning activities which have no personal self-enhancement." (Rogers, 1947)

Even with this very brief description of basic learning theories, it is obvious that the exact mechanism of learning not fully understood. This greatly complicates the administrator's job because it

leaves the administrator with no clear guidelines about how to apply the theories presented to a program for controlling the behavior of police personnel. Identifying which theory to ascribe to involves identifying the type of learner. As the variety of pre-employment histories increases, so does the problem.

While there may be a grain of truth to the theory that there are certain police "types" or "personalities", it is more probable that police officers come from an ever broadening cross-section of humanity. Title VII, and other laws, were created to achieve this very purpose. Zemke and Zemke (1981) have reduced an incredibly large literature down to a size and form much more useful for the purpose of this study.

The reader is reminded that the original ideas were first developed and applied in the fields of adult education and industrial training programs where effectiveness means corporate survival. Still, there seems no reason to believe that the basic ideas expressed cannot be generalized to the police environment as well.

Adults seek out learning experiences in order to cope with specific life-change events. Marriage, divorce, a new job, are all examples of such events. The literature indicates that they cannot be threatened, coerced, or tricked into learning something new. This should be of interest to those agencies which use the "stress

academy" model where recruits are constantly kept in fear of sanctions or dismissal for not performing well on tests.

Learning experiences which adults seek out on their own are those which they perceive as being the most useful to them. If they do not see how a body of knowledge will help them personally, they will not be interested and may well resist it.

The more experienced (older) a learner becomes, the less interested he is in general theory or survey courses and the more interested in specific information addressing specific problems. In other words, experienced officers will not be interested in general refresher classes but will be interested in those which deal with the officer's own day to day problems. This information counsels against the practice of "role call" training for everyone in the department at one time, suggesting, rather that specific groups be isolated based on experience and rank rather than merely their shift assignment.

Ideas and information which conflict with what is already accepted as "truth" will be integrated more slowly than that which is consistent with the status quo. Obviously this indicates that more time and effort must be committed to teaching material representing a departure from "the old way". It is not the complexity of the information or technology which slows

assimilation, it is the perception of change from what has always been. The "good guys" will readily accept using computers to catch "bad guys", but they will strongly resist simple information which changes the identity of the "bad guys".

Adults prefer self-directed or self-paced learning programs over typical group centered learning by a margin of seven to one. For police officers, who seem to be even more independent natured than the general population (Wilson, 1974), it would seem that the conventional classroom setting of most academies should be supplanted by more small-group and one-on-one instruction.

This would be more labor intensive for the agency but might be more efficient and effective which, in turn, could reduce the total time required to complete the curriculum. Military training programs have been very successful with self-paced "fast tract" programs where entrance screening and performance requirements were rigidly enforced.

Regardless of the media or format used to present material, 80% of adult learners cited a need for more "hands-on" application of the material presented. This means that academies must move away from rote memory and lecture, and incorporate more role playing and situation analysis (Parker, Meier, and Monahan, 1989). The advent of video cameras and interactive computer learning

programs make such training within the reach of virtually all departments.

Adults, unlike children, bring a considerable life experience into the classroom. Consequently they have some basis for opinion on virtually any subject presented. What is more, their self esteem and ego are on the line each time their preconceived opinions are put to the test. If the information is presented in such a manner as to threaten a learner's image in front of peers, the learner will avoid the threat by non-participation, if not outright attack on the material and the presenter.

Police training situations should give the trainee an opportunity to develop or learn the preferred answer or appropriate behavior by a variety of means before exposing the trainee to a test situation in front of peers. The pressure generated by a "stress learning situation" with peer pressure as the stressor may be of some value in weeding out some types of individuals who cannot handle pressure, but it probably weeds out a lot more who could have learned how given the chance.

The bottom line is that in the criminal justice community's effort to document improved training, it has often focused on that training which is the easiest to document and quantify. Numbers of officers trained and numbers of man-hours committed are much easier to quantify than behaviors changed or lessons learned.

Unfortunately the error is not usually noticed until the behavior resulting from the training is reviewed by the courts and the causal link attached to the administrator or the agency.

CHAPTER 6
SUMMARY AND CONCLUSIONS

Summary

Traditional attempts to improve the use of force policies and procedures of criminal justice agencies have used the opinions of various authorities from different disciplines to guide the policy making process. Though well intended, these attempts have proven inadequate due to technical uncertainties within the various disciplines as well as a lack of consensus among the various authorities as to what strategies are most effective at reducing injuries to all those involved, and the litigation which may result.

Focusing on the behavior of the courts in use of force cases provides data which could be used to more accurately anticipate the decisions of those same courts in potential litigation arising from policy decisions.

Data from the sample are fairly consistent with the general opinions found in the literature, but since the various authors arrived at their opinions from a medley of perspectives, and for different reasons, it is useful to document the opinions of the courts as the one point where all of the different arguments must ultimately be evaluated by a single trier of fact.

Although the literature tends to present the seven subjects examined as generally equal in importance with regard to liability, this was not reflected in data.

Assignment and entrustment were either not mentioned at all, or only vaguely suggested as part of the more general topic of supervision. The reader is cautioned not to construe this as an indication of importance but, rather, the result of the sampling method and the behaviors of plaintiff's attorneys in selecting causes of action under which to file suit. del Carmen (1986) and others present numerous examples from the case law which indicate the courts are as willing to find these issues at least as important as the others mentioned in this study.

Perhaps the most challenging facet of this study was attempting to narrow the cases down to a single issue for classification. Because the cases sampled often dealt with more than one issue, this endeavor was soon abandoned and cases were assigned more than one classification. The result is reflected in the fact that the sum of the cases listed under each category is greater than the total number of cases in the sample. In other words, total opinions rather than total cases are reflected in Figure 4.1. Even with this liberalization of the original scheme of classification, some of the cases studied met none of the criteria for inclusion with the original design of the study.

Because the study focused on appellate court decisions, several of the cases only reflected the discussion of issues which occasioned the appeal. If

that issue was immunity alone, as in Able v. Miller, 824 F.2d 1522 (7th Cir. 1987), dicta from the case often left the reader with little of the information needed to determine what sort of police behavior had actually occasioned the original litigation.

Fifty of the cases dealt only with the issue of excessive force. The court did not address whether any other factors precipitated such use of force but, instead dealt only with whether the force used was constitutional.

Cases reflected an evolution in the thinking of the courts. Earlier cases used a "due process" test to determine whether civil rights had been violated, more and more courts began to adopt the "objective reasonableness" test of the Fourth Amendment. This position was finally standardized in Tennessee v. Garner, 471 U.S. 1 (1985) where the court held that all use of force cases would be governed by the Fourth Amendment. The justices supported and expanded this holding in a police roadblock case Brower v. County of Inyo ___U.S.___, 109 S.Ct. 1378 (1989).

Because of the number of cases which fell, by default into this "force-only" category, the data was included in the tables for comparison. It is interesting to note that 68% (34) of the force-only cases were decided in favor of the plaintiff. Examination of the opinions seemed to indicate a temporal aspect to the trend of the

decisions. That, coupled with the previously noted change in tests used by the court in determining constitutionality of use of force cases, prompted a reexamination of the cases with regard to sequence.

Figure 6.1 indicates how the cases were decided by year.

Year	Won by plaintiff	Won by Government
1961	1	0
1965	1	0
1968	2	0
1970	2	0
1971	5	0
1972	3	0
1973	3	0
1974	1	1
1975	2	1
1976	2	1
1977	1	0
1978	1	0
1979	2	0
1980	5	0
1981	8	2
1982	4	0
1983	8	5
1984	8	7
1985	20	11
1986	8	7
1987	17	14
1988	11	24
1989	7	4

Figure 6.1 Distribution of Cases by Year and Outcome

Clearly there has been a shift in the trend of decisions from strongly favoring the plaintiff in years 1961 through 1982, to pulling about even in 1983 through 1987, and strongly favoring the defendant in 1988. This would seem to indicate that the change in tests used by the court in these cases has not disadvantaged the police. An alternate explanation might be that police agencies are getting better at defending themselves against litigation but that determination is outside the

scope of this study.

Another factor of interest brought out by the data was the apparent dissimilarity of the holdings in the different circuits. To examine the results more thoroughly and to more thoroughly understand any differences, the cases were arranged according to circuit. Lower court cases were included in the data from the next higher court and the Supreme Court data were presented as a separate category for comparison. Figure 6.2 is the result, indicating that although the activity levels vary from court to court, the holdings indicate a fair amount of balance with a slight tendency to favor the plaintiff.

Cir.	Won by plaintiff	Won by Govt.
1st.	4	3
2nd	8	3
3rd	6	1
4th	8	4
5th	21	8
6th	14	8
7th	13	11
8th	7	7
9th	6	5
10th	6	8
11th	9	5
D.C.	5	0
Supreme Court	18	11

Figure 6.2 Distribution of Cases by Circuit.

This could be explained by the tendency for the weak or frivolous cases to be screened out by motions early in the process.

Notable exceptions to this are the Third, Fifth and D.C. Circuits. Administrators might do well to be especially proactive and vigilant in those circuits since the courts seem to favor the plaintiff over

seventy percent of the time. Certainly there have been cases won by the government in the D.C. Circuit, and this sample is not presented as having been scientifically selected. Still, when all of the cases examined go in favor of the plaintiff in sharp contrast to all other circuits, the police administrator would do well to take the data into consideration when formulating policy. Perhaps the court's warning in Carter v. Carlson, 447 f. 2d 358 (D.C. Cir. 1971), is worth repeating. The court stated that the City of Washington D.C. was "even more subject to liability" since it was under the near total supervision of congress. The behavior of the court seems to be consistent with that position.

Conclusions

Negligent selection was under emphasized in the hiring process of many agencies involved in the sample cases. If this can be generalized to the larger population it is the obvious starting point for any program to reduce liability risk. The key issue is "forseeability" and the decisions reflected in this study are thoroughly consistent with the recommendations made in the AELE Workshop on Police Liability and the Defense of Police Misconduct Complaints (Schmidt, 1982) and others writing on the subject. Administrators must take positive action to ensure the proper screening of

all potential employees despite the inconvenience inherent in complying with Title VII.

Traditional patterns of selection such as hiring former military personnel, with the assumption that the military had already screened out unsuitables, cannot be justified as adequate screening. The kind of an officer an applicant wants to be is as important as wanting to be one.

It is also clear that when a selection process is challenged, the administrator will be hard pressed to find support for inadequate policies and procedures since the leading authors represented in the literature seem to universally espouse more stringent selection criteria and none were found in opposition.

Training must undergo the same type of evolution that the decisions of courts have undergone if administrators are to be successful in any attendant litigation. Rather than "going by the numbers", providing only what is required by law, training must reflect the current objective reasonableness standard of the Fourth Amendment. In practice, that means training must reasonably reflect the needs of the job. It must be relevant and it must be constantly updated to reflect the changing needs of society and the law and it must, likewise recognize the fact that other variables such as peer pressure, emotion, lack of information, vague

orders, and memory lapses all work to nullify even the most comprehensive training.

The area of training that has received the most attention is, of course, firearms policy. Current training programs reflect this concern by committing inordinately large blocks of time to weapons training, teaching officers "how to shoot".
Only recently have curricula been developed addressing when to shoot.

Even these shoot/no-shoot courses err by repeatedly placing the trainee in a situation where shooting is generally the final outcome, then evaluating the performance based on shots fired and hits scored.

The literature from training experts and adult learning theorists consistently indicate that adults under stress will do what they have been programed or trained to do. If shooting is presented as the ultimate resolution of any progressively deteriorating situation, it should be no surprise that officers faced with what appear to be "no win" situations reflexively resort to shooting.

Rather than teaching recruits to shoot then sending them through some sort of stress type shooting course, they should be sent through the course unarmed with training in deescalation, avoidance and violence management. After developing and demonstrating competence in handling potentially violent situations

without weapons they should be graduated to running the course with weapons available on request, rather like calling for a supervisor. The final stage would be traversing the course while armed but receiving points for deescalating situations while losing points for using force or weapons.

Scoring of performance should reflect the court's instructions in Tennessee v. Garner, and in Young v. City of Killeen, Texas which require the officer to consider: 1) The threat to the officer, 2) likelihood of effectiveness.. 3) risk to third parties .. 4) and alternatives available other than force.

Part of the course should include doing the paperwork associated with discharging a firearm, answering to internal affairs, and a mock trial if indicated by the trainee's action. This type of training would reflect a relevance to the use of force which is clearly lacking most training programs.

Finally, all such training should be documented as to its relevance and transference. In other words the administrator must ask two basic questions about any training: 1) Was it any good? and 2) Did it do any good? No answer or an answer of "no" will be equally damning in any litigation.

Assignment and entrustment were underrepresented for the purposes of meaningful conclusions, however, mention

can be made of them as integral parts of the larger subject of supervision. This should in no way lead the reader to conclude that the court sees them as less important. It is more likely that this result was a reflection of the behaviors of attorneys who less frequently cite them as causes of action.

Supervision, despite the complexity of the issue in general, is perceived rather simply by the courts. Fundamentally, authority is tied to responsibility so completely that one cannot be considered without the other. Since responsibility will always attach when authority is granted, it is important for supervisors to be aware that they are responsible for "knowing" and for "acting".

Knowing, with regard to allegations of excessive force, requires investigating, substantiating, and evaluating all allegations of abuse. If the appellate courts were unwilling to let a trial court judge dismiss charges based on the credibility of the plaintiffs, they can scarcely be expected to grant that power to a police official (Byrd v. Brishke, 466 F.2d 6, 7th Cir. 1972).

The responsibility to act is an affirmative one. It requires the supervisor to take action pro-actively as well as reactively and remedially. The administrator must be able to show the court that programs were in place to prevent abuse, such as selection and training

programs; to stop abuse, such as close supervision and surveillance; and to preclude its recurrence, as in counseling, retraining, suspension, and dismissal. Courts seem to see supervision as a chain and, despite the strength of any of the other links, a failure in one attaches liability to all.

A final note on this subject is that police administrators are not the only ones entrusted with authority and its attendant responsibility. All officers must be made aware that where abuse of authority is concerned, the courts see all officers as supervisors, regardless of rank. Knowledge of any abuse compels the officer to take affirmative action. Failure to do so automatically attaches liability to all officers who were aware (Ware v. Reed ,709 F.2d 345 5th Cir. 1983).

Direction must be considered in all of its forms. Since the courts have seen fit to recognize direction variously as written directives, policies, procedures, customs, habits, traditions, rules, procedures, practices, systematic behaviors, and even single decisions, the administrator must assume that anything communicated by any supervisor or condoned by that supervisor or ignored by that supervisor, could be declared policy for the purposes of Section 1983.

This means that all endeavors to influence employees

must be consistent with the following rules for directives just in case such endeavors are later held to be directives:

(1) Tell employees what to do clearly, completely, and concisely.

(You will be accountable for what they do based on what you said; not what you meant.)

(2) Telling employees what not to do just as clearly, completely and concisely,

(You will be held accountable for what they do based on what they did not know.)

(3) Tell employees when they can do it, clearly describe circumstances and time frames. (Use examples.)

(Complex directives will probably require training. Obviously there is exposure for negligent failure to train.)

(4) Tell employees when they cannot do it, (Same as above)

(5) Tell them how much they can do.

(Define degrees of force and the meaning of reasonableness in the eyes of the court. Perceptions of reasonableness may vary with the officer and the situation but review of the decisions will always be made in court.)

(6) Tell them what will happen if they fail to comply.

(This not only demonstrates the relative seriousness of the situation but protects the agency and administrator if later sanctions are in order.)

(7) Tell them in accordance with the law.

(Directives, in whatever form, must at least be consistent with current law. That means statute as well as case law. Ignoring developments in the courts by adhering to old standards and rituals invites disaster.)

(8) Follow through on what you told them.

(Directives without follow-through are like purchases without money. They may set things in motion initially but credibility is soon lost.)

(9) Document that all of the above was done.

(If it isn't on paper, it didn't happen; unless, of course, it was something you said for which you are being held liable. Consider the worst case scenario in all statements made and put in writing anything that might be problematic.)

(10) Repeat the whole process again and again.

(People go. People come. People forget. People change. Times change. Any of these are sufficient cause to start the process all over again. All of these are regular events in any agency making constant evaluation and update of directives mandatory.)

Retention, perhaps above all other subjects examined, requires tough choices for the administrator. The administrator could find himself in the unenviable position of defending himself and the agency in a Section 1983 suit resulting from a subordinate's misconduct. Then, since he is acting in his official capacity his actions are under color of law, he will be defending himself and the agency for dismissing the offending officer. The officer would now be the plaintiff and have every advantage over the government described earlier.

The administrator must document everything. Instruction not documented is, for defense purposes, lost. The same follows for attempts to counsel and restrain the abusive officer. Policy is far too easy to establish to afford the administrator the luxury of being "a nice guy".

Expectations are placed on the administrator from two directions. He is expected to protect the rights of citizens to be free from abuse by officers, and he is expected to respect the rights of officers to the property rights attached to public employment. In balancing the interests of the public against the interests of the officer, the courts will generally favor the public but the administrator remains at the

fulcrum carrying the weight of both.

In any case the administrator is expected to take action consistent with the law. Failure to do so can be seen as participating in any abuse.

Implications for Future Research

It became readily apparent, during the course of this study, that it did not go far enough. Although the behavioral trends of the courts, that were identified, may be useful in evaluating policies and procedures, the data must be immediately suspect for bias.

The sheer volume of information in the case law and the fact that it is in a form which does not lend itself to quantification, precluded working with a larger sample or using more scientifically acceptable sampling techniques.

Recently, however, advancements in computer and communications technology have put law libraries on compact disk (CD) and made the entire body of recorded law accessible to personal computer operators through commercial modem arrangements such as LEXIS and WESTLAW.

Currently, available programs enable the user to search entire law libraries for cases with certain words or phrases in a matter of minutes. The potential is

obvious, where this study required months of manually searching for and reading case law then manually taking notes and transcribing them into the data base for analysis. The same operations could be completed at a computer screen through a "cut and paste" operation moving hundreds of pages worth of data in seconds.

Since even the limited scope of the instant study produced what appear to be useful results, the implication is that this study should be expanded upon and conducted in other areas of the law. A circuit by circuit, or state by state, analysis of those issues still unsettled by the high court could be invaluable to administrators formulating or reviewing policies and procedures.

Examinations of volumes of cases over time could identify trends enabling administrators to anticipate changes in judicial behavior before falling victim to a departure from past rulings. It is clear that new technology necessitates new approaches to administration. This exercise, if nothing else, demonstrates that a lay person can access a considerable amount of information about the law. The software available to virtually all police administrators enables them to research much more law and legal reasoning than ever before. Consequently the words "knew or should have known" take on a completely new meaning. Courts will expect more and more from administrators in the way

of knowledge of the law. Those who recognize this as an environmental change and adapt will survive; others will not.

APPENDICES

APPENDIX A

TABLE OF CASES

CITATION AND CATEGORY

Appendix A

Cases and Categories

I
Able v. Miller, 824 F.2d 1522 (7th Cir. 1987)
(Won by officer)

F
Agee v. Hickman 490 F.2d 212 (8th Cir. 1974)
(Won by deputies)

F
Allee v. Medrano, 416 U.S. 802 1974)
(Won by citizen Plaintiff)

T, I.
Anderson v. Creighton, 107 S.Ct. 3034 (1987)
(Won by officer)

SU
Anderson v. Nosser 438 F.2d 183 (5th Cir. 1971)
(Won by citizen Plaintiff)

T SU
Anderson v. Roberts, 823 F.2d 235 (8th Cir. 1987)
(Won by citizen plaintiff, sheriff held liable)

D
Baker v. St. Luois Board of Police Commissioners, No. 83-2536 (8th Cir. 1984)
(won by defendant officers)

T
Basista v. Wier, 340 F.2d 74 (3rd Cir. 1965)
(Won by citizen plaintiff)

T SU
Batista v Rodriruez, 702 F. 2d 393 (2nd Cir. 1983)
(Won by officers and city)

F
Bauer v. Norris, 713 F.2d 408 (8th Cir. 1983)
(Won by citizen Plaintiff)

T,
Estate of Belew by Belew v. Ruppert, 694 F.Supp 1214 (1988)
(Won by deputy)

F
Bell v. City of Milwaukie, 746 F.2d 1205, 1279 (7th Cir. 1989)
(Won by citizen plaintiff)

F
Bivins v. Six Unknown Named Agents of the Federal Bureau of Narcotics
403 U.S. 388 (1971)
(Won by citizen Plaintiff)

D SU
Black v. Stevens, 662 F.2d 181 (3rd Cir. 1981)
(Won by citizen Plaintiff)

I
Bledsoe v. Garcia, 742 F.2d 1237 (10th Cir. 1984)
(Won by officer)

I **Boswell v. Sherburne County**, 849 F.2d 1117,(8th Cir. 1988) rehearing denied
(Won by citizen Plaintiff)

R SU
Brandon v. Chapman, Memphis District Court (W. D. Tenn. 1981)
(Won by citizen Plaintiff)

T R D SU
Brandon v. Holt, 469 U.S. 464, 105 S. Ct. 873 (1985)
(Won by citizen Plaintiff)

F,I
Brandenburg v Cureton, 882 F.2d 211 (6th Cir. 1989)
(won by officers)

T D
Brower v. County of Inyo, U.S. , 109 S.Ct. 1378 (1989)
(Won by citizen Plaintiff)

T SU D
Brown v. City of Clewiston, 848 F.2d 1534 (11th Cir. 1988)
(Won by city)

F
Brown v. Glossip, 878 F.2d 871 (5th Cir. 1989)
(Won by citizen plaintiff)

F
Brumfield v. Jones, 849 F.2d 152 (5th Cir. 1988)
(won by officers)

SU
Byrd v. Brishke, 466 F.2d 6 (7th Cir. 1972) {LEADING CASE}
(Won by citizen plaintiff)

SU
Byrd v. Clark, 783 F.2d 1002 (11th Cir. 1986).
(Won by citizen plaintiff)

D
Cameron v. City of Pontiac, Mich.,813 F.2d 782 (6th Cir. 1987)
(won by city)

T, SU
Carter v. Carlson, 447 f. 2d 358 (D.C. Cir. 1971), rev'd on other grounds sub nom.
(Won by citizen plaintiff)

F
Carter v. City of Chattanooga, 850 F.2d 1119 (6th Cir. 1988)
(Garner not retroactive)
(Won by city)

SU
Carter v. Noble, 526 F.2d 677 (5th Cir. 1976)
(Won by citizen plaintiff)

F,I
Chathat v Smith 884 F.2d 980 (7th Cir. 1989)
(won by officer)

T
City of Canton, Ohio v. Harris, 108 S.Ct. 1105 (1988)
57 U.S.L.W 4271 (1989)
(won by city)

T D SU
City of Fayetteville N.C. v. Spell, 824 F.2d 1380 (4th Cir 1988) cert. denied, 108 S.Ct. 752 (1988).
(Won by citizen plaintiff)

SU D
City of Los Angeles v. Heller, U.S. _____,106 S.Ct. 2268 (1986)
(won by city)

I
City of Newport v. Fact Concerts Inc. 453 U.S. 247 (1981) (Won by city)

T D
City of Oaklahoma City v. Tuttle, 471 U.S. 808, 105 S.Ct. 2427 (1985) (initially won by citizen plaintiff against city only, reversed by Supreme Court)

D
City of Rensselaer v. Fiacco, 107 S.Ct. 1384 (1987) (Won by citizen plaintiff)

T SU D
City of Shepherdsville v. Rymer, 107 S. Ct. 1369 (1987) (Won by citizen plaintiff) (see Rymer v. Davis 754 F.2d 198)

D
City of St. Louis v. Praprotnik, 108 S.Ct. 915 (1988). (Won by City)

T I (corr)
Clark v. Evans, 840 F.2d 876 (11th Cir. 1988) (won by officer)

T
Courtney v. Reeves 635 F.2d 326 (5th Cir. 1981) (Won by citizen Plaintiff)

F
Crawford v. Edmonson, 764 F.2d 479 (7th Cir. 1985). (Won by officer)

T D
Curtis v. Everette, 849 F.2d 516 (3rd Cir. 1973) (Won by citizen plaintiff)

T,
Daniels v. Williams, 474 U.S. 327, 106 S.Ct. 662 (1986) (Won by officer)

T, D
Davis v. City of Ellensburg, 869 F.2d 1230 (9th Cir. 1989)
(Won by officers and city)

F
Davis v. Forrest, 768 F.2d 257 (8th Cir. 1985) (Won by officer)

T
Davis v. Little, 851 F.2d 605 (2d Cir. 1988) (Won by citizen plaintiff)

I
Davis v. Scherer, 468 U.S. 183, 197. 104 S.Ct. 3012 (1984)
(Won by officer)

T
Dell Fargo v. City of San Juan Bautista, 857 F.2d 638 (9th Cir. 1988) (won by city)

T
Dodd v. City of Norwich, 815 F. 2d 862 (2nd Cir. 1987) 827 F.2d 1 (87)
(Won by city)

D
Dorsey v. City of Detroit 858 F.2d 338 (6th Cir. 1988) (won by city)

D
Dunster v. Metropolitan Dade County, 791 F.2d 1516 (11th Cir. 1986)
(Won by county and officer)

F
Edward v. City of Philidelphia, 860 F.2d 568 (3d Cir. 1988)
(Won by city)

SU D
Fiacco v. City of Rensselaer, N.Y., 783 F.2d 319 (2nd Cir. 1986)
(won by citizen plaintiff; officers liable, city liable)

D
Fletcher v. O'Donnell, 867 F.2d 791 (3rd Cir. 1989)
(Won by citizen Plaintiff)

T D
Ford v. Childers, 855 F.2d 1271 (7th Cir. 1988) (en banc)
(won by officer)

T SU D Get Case
Foulds v. Corley, 833 F.2d 52 (5th Cir. 1987)
(Won by citizen Plaintiff)

T SU
Fratiello v. Mancuso, 653, F Supp. 775. (DC RI 1987)
(Won by officer and city)

F
Garcia v. United States, 826 F. 2d 806 (9th Cir. 1987)
(Won by Govt)

F
Garrick v. City and County of Denver, 652 F.2d 969 (10th Cir. 1981)
(Won by citizen Plaintiff)

I, F
Gilmer v. City of Atlanta, 774 F.2d 1495 (11th Cir. 1985)
(Won by citizen Plaintiff)

F
Grahm v. Connor, U.S. ,109 S.Ct 1865 (1989)
(Won by citizen Plaintiff)

D R SU
Grandstaff v. City of Borger, 767 F.2d 161 (5th Cir. 1985) (Won by citizen Plaintiff)

T,SU,D
Greenburg v. Mynczywor, 667 F.Supp. 901 (D.N.H.) (1987)
(won by city)

T D
Guider v. Smith, 403 N.W.2d 505 (Mich. App. 1987)
(won by citizen plaintiff)

T SU D
Gumz v. Morrissette, 772 F.2d 1395 (7th Cir. 1985)
(won by city)

F
Hagge v. Bauer, 827 F.2d 101 (7th Cir. 1987)
(Won by citizen Plaintiff) officer liable

T SU
Hand v. Dayton-Hudson 775 F.2d 757 (6th Cir. 1985)
(won by plaintiff) city liable

F
Hamilton v. Chaffin, 506 F.2d 904 (5th Cir. 1975)
(won by city and officers)

T D SU
Hampton v Hanrahan, 600 F.2d 600, 626 (7th Cir. 1979)
(Won by citizen Plaintiff)

SU
Heller v. Bushey, 759 F.2d 1371 (9th Cir. 1985)
(Won by citizen Plaintiff)

T
Heath v. Henning, 854 F.2d 6 (2nd Cir. 1988)
(won by plaintiff)

SU T
Hendrix v. Matlock, 872 F.2d 1273 (5th Cir.1986)
(won by city)

F
Hernandez v. City of Los Angeles, 624 F.2d 935. (9th Cir. 1980)
(Won by citizen Plaintiff)

F
H.C. by Hewett v. Gerrard, 786 F.2d 1080 (11th Cir. 1986)
(Won by citizen Plaintiff) Supervisor personally and officially liable.

T
Hinojosa v. City of Terrel, Texas, 834 F.2d 1223 (5th Cir. 1988)
(won by city)

SU, T
Hinshaw v. Doffer, 785 F.2d 1260 (5th Cir. 1986)
(Won by citizen Plaintiff)

T
Hopkins v. City of Laramie, Wyo., 730 F.2d 603 (10th Cir. 1984)
(Won by city)

F (corr)
Hudspeth v. Figgins, 584 F.2d 1345 (4th Cir. 1978)
(Won by citizen Plaintiff)

F
Jackson v. Crews, 873 F.2d 1105 (8th Cir. 1989)
(won by citizen plaintiff)

SU, T
Jamison v. Shaw, 772 F.2d 1205 (5th Cir. 1985)
(Won by citizen Plaintiff)

F
Jenkens v. Averett, 424 F.2d 1228 (4th Cir. 1970)
(Won by citizen Plaintiff)

F (corr)
Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973)
(Won by citizen Plaintiff)

F
Johnson v. Moral, 843 F.2d 846 (5th Cir. 1988)
(won by officer)

D
Jones v. Marshall, 528 F.2d 132 (2nd Cir. 1975)
(won by Citizen plaintiff)

D
Justice v. Dennis, 834 F.2d 380 (4th Cir. 1987) (en banc)
(won by city)

T SU D
Keller v. Truska, 694 F. Supp. (1384 E.D. Mo. 1988)
(won by officers and city)

D
Kerr v. City of Chicago, 424 F. 2d 1134 (7th Cir. 1970)
(Won by citizen Plaintiff)

T
Kibbe v. City of Springfield, 777 F.2d 801 (1st Cir.1985)
(won by Plaintiff)

F
Kidd v. O'Neil, 774 F.2d 1252 (4th Cir. 1985)
(Won by citizen Plaintiff)

F (corr)
King v. Blankenship, 636 F.2d 70,72 (4th Cir. 1980)
(Won by citizen Plaintiff)

T
Klein v. Ryan, 847 F.2d 368 (7th Cir. 1988)
(won by officers)

F
Lamb v. Cartwright 524 F.2d 238, (5th Cir. 1975)
(Won by citizen Plaintiff)

T SE
Landrigan v. City of Warwick,628 F.2d 1512 (1st Cir. 1980)
(Won by citizen Plaintiff) officers liable; citys not

D
Languirand v. Hayden 717 F.2d 220 (5th Cir. 1983)
(Won by citizen Plaintiff) city; liable officers not

T D
Leber v. Smith, 773 F.2d 101 (6th Cir. 1985)
(Won by govt)

SU
Lenard v. Argento, 699 F.2d 874 (7th Cir. 1983)
(Won by plaintiff)

T D
LeSavage v. White, 755 F.2d 814 (11th Cir. 1985)
(Won by citizen Plaintiff)

T D
Lester v. City of Chicago, 830 F.2d 706 (7th Cir. 1987)
(Won by citizen Plaintiff)

F
Lewis v. Downs, 774 F.2d 711 (6th Cir. 1985)
(Won by citizen Plaintiff) officers liable

T SU
Maddox v. City of Los Angeles, 792 F. 2d. 1408 (9th Cir. 1986)
(won by city)

D
Manning v. Jones 696 F.Supp 1231 S.D. Ind. (1988)
(Won by officers)

T,SU
Marchese v Lucas, 578 F.2d 181 (6th Cir. 1985)
(Won by citizen plaintiff)

F
Mark v. Caldwell, 754 F.2d 1260 (5th Cir. 1985)
(Won by officer)

I
Martin v.Dallas County, 822 F.2d 553 (5th Cir. 1987)
(Won by citizen Plaintiff)

SU D
Martin v. Gentile, 849 F.2d 863 (4th Cir. 1988)
(Won by officer)

D
Martin v. Georgia Department of Public Safety, 108 S.Ct. 685 (1988)
(Won by police)

I, D, T
Martin v. Halhoyt, 830 F.2d 237, 262-63 D.C. Cir. 1987)
(Won by citizen Plaintiff)

D I
Martinez v. California, 444 U.S. 277 (1980)
(Won by citizen Plaintiff)

T SU SE
Martinez v. Cordova, 676 F. Supp. 1068 (D.N.M. 1987)
(won by city)

T, SU
Meade v. Grubbs, 841 F.2d 1512 (10th Cir. 1988)
(Won by citizen Plaintiff)

T SU R
McClelland v. Facteau, 610 F.2d 693 (10th Cir. 1979)
(Won by citizen Plaintiff)

T
McCrimmon v. Kane County, 606 F.Supp 216 (N.D. Ill. 1985)
(Won by citizen Plaintiff)

F
McDaniel v. Carroll, 457 F.2d 698 (6th Cir. 1972)
(Won by citizen Plaintiff)

F
McFadden v. Sanchez, 710 F.2d 907 (2nd Cir. 1983)
(Won by citizen Plaintiff) Officers liable.

F
United States v. McKenzie, 768 F.2d 602 (5th Cir. 1985)
(Won by govt. for plainitff)

SE SU R
McKinnon v. City of Berwyn, 750 F.2d 1383 (7th Cir. 1984)
(Won by citizen Plaintiff)

SU
McQurter v. City of Atlanta Ga., 572 F.Supp. 1401 (N.D. Ga. 1983)
(Won by citizen Plaintiff)

T
Milligan v. City of Newport News, 743 F.2d 227 (4th Cir. 1984)
(won by City)

D
Monell v. Dept of Social Services 436 U.S. 658 (1968)
(Won by citizen Plaintiff)

SU
Monitor v. City of Chicago, 653 F. Supp 1294 (N.D. Ill, 1987)
(won by city)

D
Monroe v. Pape, 365 U.S. 167 (1961)
(won by citizen plaintiff)

F
Morrell v. City of Picayune, 690 F.2d 469 (5th Cir. 1982)
(Won by citizen Plaintiff)

I
Morrison v. City of Batton Rouge, 761 F.2d 242 (5th Cir. 1985).
(Won by city)

F
Molton v. City of Cleveland, 839 F.2d 240 (6th Cir. 1988)
(Won by citizen Plaintiff)

E
Nishiyama v. Dickson County, Tenn, 814 F.2d 277 (6th Cir. 1987)
(won by plaintiff)

O
Norris v. District of Columbia, 737 F.2d 1148 (D.C. Cir. 1984)
(Won by citizen Plaintiff)

T D
Oklahoma City v. Tuttle, 105 S.Ct 2427 (1985) cert. denied, 106 S.Ct. 16 (1983).
(won by city)

D SU
O'Neal v. DeKalb County, Ga. , 850, F.2d 1119 (6th Cir. 1988)
(Won by county)

SU D
O'Neil v. Krzeminski, 839 F.2d 9 (2d Cir. 1988)
(Won by citizen Plaintiff)

D
Owen v. City of Independence Mo., 445 U.S. 622 (1980)
(Won by citizen Plaintiff)

T
Owens v. City of Atlanta, 780 F.2d 1564 1564 (11th Cir. 1985)
(won by city)

SE
Parker v. Williams, 862 F.2d 1471 (11th Cir.1989)
(won by plaintiff) city and sheriff liable

I
Patzer v. Burkett, 779 F.2d 1363 (8th Cir. 1985).
(Won by citizen Plaintiff)

T
Parker v. District of Columbia, 850 F.2d 708 (D.C. Cir. 1988)
(Won by citizen Plaintiff)

F
Parrott v. Wilson, 707 F.2d 1262 (11th Cir. 1983)
(Won by officer)

F
Payne v. District of Columbia, 559 F.2d 809 D.C. (D.C. Cir. 1977)
(Won by citizen Plaintiff)

SU D
Pembaur v. City of Cincinnati, 475 U.S. 469,106 S.ct. 1292,1298 (1986)
(Won by citizen Plaintiff)

SO, R
Pennsylvania v. Porter, 659 F.2d 306, (3rd Cir. 1981)
(Won by citizen Plaintiff)

D
Peraza v. Delameter, 722 F.2d 1455 (9th Cir. 1984)
(Won by citizen Plaintiff)

T, SU
Popham v. City of Kennesaw, 820 F.2.d 1570 (11th Cir. 1987)
(Won by citizen Plaintiff)

D SU
Powe v. City of Chicago, 664 F.2d 639, 651 (7th Cir. 1981)
(Won by citizen Plaintiff)

F
Price v. Baker 693 F.2d 952 (10th Cir. 1983)
(Won by sheriff)

D
Pruit v. City of Montgomery, Ala., 771 F.2d 1475 (11th Cir. 1985)
(Won by citizen Plaintiff)

F
Raley v. Fraser, 747 F.2d 287 (5th Cir. 1984)
(Won by citizen Plaintiff) Officers liable

T
Rhode v. Denson, 776, F.2d 107 (5th Cir. 1985)
(Won by county)

SU
Rizzo v. Goode, 423 U.S. 362, 96 S. Ct. 598 (1976)
(won by city)

D
Roach v. City of Fredericktown, 693 F.Supp. 795 (E.D.Mo.1988)
(Won by city)

F
Roberts v. Marino, 656 F.2d 1112 (5th Cir. 1981)
(Won by citizen Plaintiff)

SU I
Roberts v. Williams (5th Cir. No. 28,829 April 1971)
(Won by citizen Plaintiff)

T
Robinette v. Barnes, 854 F.2d 909 (6th Cir. 1988)
(Won by officer)

T I
Robinson v. Bibb, 840 F.2d 349 (6th Cir. 1988).
(Won by citizen Plaintiff)

T
Rock v. McCoy, 663 F.2d 394 (10th Cir. 1985)
(Won by citizen Plaintiff)

SU D T
Rogers v. Rulo, 712 F.2d 363 (8th Cir. 1983)
(Won by officer)

T
Roose v. State 759 P.2d 478 (Wyo. 1988)
(won by officers)

SU
Rutherford v. City of Berkeley, 780 F.2d 1444 (9th Cir.1985)
(Won by citizen Plaintiff)

F
Ryder v. City of Topeka, 814 F.2d 1412 (10th Cir. 1987)
(Won by city)

T
Rymer v. Davis, 775 F.2d 756 (6th Cir. 1985)
(Won by citizen Plaintiff)

T
Sager v. Coty of Woodland Park, 543 F.Supp. 282 (D. Colo. 1982)
(Won by citizen Plaintiff)

T
Sampson v. Gilmere, ___U.S. _____, 106 S.Ct. 1993 (1986).
(Won by citizen Plaintiff)

T SU
Scarpa v. Murphy, 806, F.2d 326 (1st Cir. 1986)
(Won by city)

SE T SU R
Schaefer v. Wilcox 676 F.Supp 1092 (D. Utah 1987)
(won by plaintiff)

D
Screws v. U.S. , 325 U.S. 91 (1945)
(Won by citizen Plaintiff)

T, D, SU
Sherrod v. Berry, 827 F.2d 195 (7th Cir. 1987) No. 85-3151, August 22, 1988, 57 U.S.L.W. 2168 (September 27, 1988)
(Won by officer)

F
Shillingford v. Holmes, 634 F.2d 263 (5th Cir. 1981)
(Won by citizen Plaintiff)

T
Simms v. Adams, 537 F.2d 829 (5th Cir. 1976).
(Won by citizen Plaintiff)

T D
Smith v. City of Fontana, 818 F.2d 1411 (9th Cir. 1987)
(Won by citizen Plaintiff)

T D
Smith v. Jones 497 F.2d 924, (6th Cir. 1973)
(Won by citizen Plaintiff)

O (corr)
Smith v. Wade, 103 S.Ct. 1625 (1983)
(Won by citizen Plaintiff) Prison, assault by other inmates.

SU
Sostre v. McGinnis, 442 F.2d 178, 189-190, 205 n.51, 206-207 (2nd Cir. 1971)
(Won by citizen Plaintiff)

T D SU
Spell v. McDaniel, 824 F.2d 1380 (4th Cir. 1987)
(Won by citizen Plaintiff) officers and city liable

D
Strauss v. City of Chicago, 760 F.2d 765 (7th Cir. 1985)
(Won by city)

F
Summerlin v. Edgar, 809 F.2d 1034 (4th Cir. 1987)
(Won by citizen Plaintiff)

T D
Tennessee v. Garner 471 U.S. 1, 105 S. Ct. 1694 (1985)
(Won by citizen Plaintiff)

T D
Thomas v. City of Zion, 665 F. Supp. 642 (N.D. Ill. 1987).
(Won by city)

I
Thorsted v. Kelly, 858 F.2d 571 (9th Cir. 1988)
(won by officer)

F
Trujillo v. Goodman, 825 F.2d 1453 (10th Cir 1987)
(Won by officer)

F
United States v. McQueeney, 674 F.2d 109 (1st Cir. 1982)
(Won by citizen Plaintiff)

F conspiracy
United States v. Messerlian, 832 F. 2d. 778 (3rd Cir. 1987)
(Won by citizen Plaintiff)

T D SU
Vizbaras v. Prieber, 761 F.2d 1013 (4th Cir. 1985)
(Won by officer)

T SU
Varela v. Jones, 746 F.2d 1413 (10th Cir. 1984).
(won by city)

SE T SU
Vippolis v. Village of Haverstraw, 107 S.Ct. 1369 (1987)
(Won by city)

F
Waggoner v. Mosti, 792 F.2d 595 (6th Cir 1986)
(Won by citizen Plaintiff)

SU D
Ware v. Reed 709 F.2d 345 (5th Cir. 1983)
(Won by citizen Plaintiff)

T SU
Warren v. Lincoln, 816 F.2d 1254 (6th Cir.1987)
(Won by citizen Plaintiff)

D
Washington v. Starke, 855 F.2d 346 (6th Cir. 1988)
(Won by officer)

D
Webb v. Hiykell, 713 F.2d 405 (8th Cir. 1983)
(Won by citizen Plaintiff)

D
Webb v. Arresting Officers, 749 F.2d 500 (8th Cir. 1984)
(Won by citizen Plaintiff)

D
Webster v. City of Houston, 735 F.2d 838 (5th Cir. 1984)(en banc) Originally 689 F.2d 1220
(Won by citizen Plaintiff)

T
Wellington v. Daniels, 717 F.2d 932 (4th Cir. 1983)
(Won by citizen Plaintiff) city held liable.

R
Williams v. City of Chicago, 658 F. Supp 147 (N.D. Ill.1987)
(Won by citizen Plaintiff)

D
Whitley v. Albers, 475 U.S. 312, 106 S. Ct. 1078 (1986)
(Won by officers)

T
Wierstak v. Heffernan, 789 F.2d 968 (1st Cir.1986)
(Won by citizen Plaintiff) city and officers liable

F
Williams v. Liberty, 461 F.2d 325 (7th Cir. 1972)
(Won by citizen Plaintiff)

T
Wilson v. Beebe, 743 F.2d 342 (6th Cir. 1984)
(Won by citizen Plaintiff)

SU, D
Wing v. Britton, 748 F.2d 494 (8th Cir. 1984)
(Won by officer)

O
Wood v. Ostrander, 851 F.2d 1212 (9th Cir. 1988)
(Won by citizen Plaintiff)

T
Young v. City of Killeen Texas, 775 F.2d 1349 (5th Cir. 1985)
(Won by citizen Plaintiff)

R
Zangi v. Old Brookville, 752 F.2d 42 (2nd Cir. 1985)
(won by city)

APPENDIX B

TABLE OF CASES

BY YEAR DECIDED

Appendix B

Cases by Year Decided

D
Monroe v. Pape, 365 U.S. 167 (1961)
(won by citizen plaintiff)

T
Basista v. Wier, 340 F.2d 74 (3rd Cir. 1965)
(Won by citizen plaintiff)

D
Monell v. Dept of Social Services 436 U.S. 658 (1968)
(Won by citizen Plaintiff)

F
Terry v. Ohio, 329 U.S. 1 (1968)
(Won by citizen plaintiff)

F
Jenkens v. Averett, 424 F.2d 1228 (4th Cir. 1970)
(Won by citizen Plaintiff)

D
Kerr v. City of Chicago, 424 F. 2d 1134 (7th Cir. 1970)
(Won by citizen Plaintiff)

SU
Anderson v. Nosser 438 F.2d 183 (5th Cir. 1971)
(Won by citizen Plaintiff)

F
Bivins v. Six Unknown Named Agents of the Federal Bureau of Narcotics
403 U.S. 388 (1971)
(Won by citizen Plaintiff)

T, SU
Carter v. Carlson, 447 f. 2d 358 (D.C. Cir. 1971),
rev'd on other grounds sub nom.
(Won by citizen plaintiff)

SU I
Roberts v. Williams (5th Cir. No. 28,829 April 1971)
(Won by citizen Plaintiff)

S
Sostre v. McGinnis, 442 F.2d 178, 189-190, 205 n.51, 206-207 (2nd Cir. 1971)
(Won by citizen Plaintiff)

SU.
Byrd v. Brishke, 466 F.2d 6 (7th Cir. 1972) {LEADING

CASE}
(Won by citizen plaintiff)

F
McDaniel v. Carroll, 457 F.2d 698 (6th Cir. 1972)
(Won by citizen Plaintiff)

F
Williams v. Liberty, 461 F.2d 325 (7th Cir. 1972)
(Won by citizen Plaintiff)

T D
Curtis v. Everette, 849 F.2d 516 (3rd Cir. 1973)
(Won by citizen plaintiff)

F (corr)
Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973)
(Won by citizen Plaintiff)

T D
Smith v. Jones 497 F.2d 924, (6th Cir. 1973)
(Won by citizen Plaintiff)

F
Agee v. Hickman 490 F.2d 212 (8th Cir. 1974)
(Won by deputies)

F
Allee v. Medrano, 416 U.S. 802 1974)
(Won by citizen Plaintiff)

F
Hamilton v. Chaffin, 506 F.2d 904 (5th Cir. 1975)
(won by city and officers)

D
Jones v. Marshall, 528 F.2d 132 (2nd Cir. 1975)
(won by Citizen plaintiff)

F
Lamb v. Cartwright 524 F.2d 238, (5th Cir. 1975)
(Won by citizen Plaintiff)

SU
Carter v. Noble, 526 F.2d 677 (5th Cir. 1976)
(Won by citizen plaintiff)

SU
Rizzo v. Goode, 423 U.S. 362, 96 S. Ct. 598 (1976)
(won by city)

T
Simms v. Adams, 537 F.2d 829 (5th Cir. 1976).
(Won by citizen Plaintiff)

F
Payne v. District of Columbia, 559 F.2d 809 D.C. (D.C. Cir. 1977)
(Won by citizen Plaintiff)

F (corr)
Hudspeth v. Figgins, 584 F.2d 1345 (4th Cir. 1978)
(Won by citizen Plaintiff)
T D SU
Hampton v Hanrahan, 600 F.2d 600, 626 (7th Cir. 1979)
(Won by citizen Plaintiff)

T SU R
McClelland v. Facteau, 610 F.2d 693 (10th Cir. 1979)
(Won by citizen Plaintiff)

F
Hernandez v. City of Los Angeles, 624 F.2d 935. (9th Cir. 1980)
(Won by citizen Plaintiff)

F (corr)
King v. Blankenship, 636 F.2d 70,72 (4th Cir. 1980)
(Won by citizen Plaintiff)

T SE
Landrigan v. City of Warwick,628 F.2d 1512 (1st Cir. 1980)
(Won by citizen Plaintiff) officers liable; citys not

Lyons v. City of Los Angeles, 615 F.2d 1243 (9th Cir. 1980)
(injunction against chokehold)

D I
Martinez v. California, 444 U.S. 277 (1980)
(Won by citizen Plaintiff)

D
Owen v. City of Independence Mo., 445 U.S. 622 (1980)
(Won by citizen Plaintiff)

D SU
Black v. Stevens, 662 F.2d 181 (3rd Cir. 1981)
(Won by citizen Plaintiff)

R SU
Brandon v. Chapman, Memphis District Court (W. D. Tenn. 1981)
(Won by citizen Plaintiff)

I
City of Newport v. Fact Concerts Inc. 453 U.S. 247

(1981) (Won by city)

T
Courtney v. Reeves 635 F.2d 326 (5th Cir. 1981)
(Won by citizen Plaintiff)

F
Garrick v. City and County of Denver, 652 F.2d 969 (10th Cir. 1981)
(Won by citizen Plaintiff)

SO, R
Pennsylvania v. Porter, 659 F.2d 306, (3rd Cir. 1981)
(Won by citizen Plaintiff)

D SU
Powe v. City of Chicago, 664 F.2d 639, 651 (7th Cir. 1981)
(Won by citizen Plaintiff)

F
Roberts v. Marino, 656 F.2d 1112 (5th Cir. 1981)
(Won by citizen Plaintiff)

F
Shillingford v. Holmes, 634 F.2d 263 (5th Cir. 1981)
(Won by citizen Plaintiff)

F
Morrell v. City of Picayune, 690 F.2d 469 (5th Cir. 1982)
(Won by citizen Plaintiff)

T
Sager v. Coty of Woodland Park, 543 F.Supp. 282 (D. Colo. 1982)
(Won by citizen Plaintiff)

F
United States v. McQueeney, 674 F.2d 109 (1st Cir. 1982)
(Won by citizen Plaintiff)

T SU
Batista v Rodriruez, 702 F. 2d 393 (2nd Cir. 1983)
(Won by officers and city)

F
Bauer v. Norris, 713 F.2d 408 (8th Cir. 1983)
(Won by citizen Plaintiff)

D
Languirand v. Hayden 717 F.2d 220 (5th Cir. 1983)
(Won by citizen Plaintiff) city; liable officers not

SU
Lenard v. Argento, 699 F.2d 874 (7th Cir. 1983)
(Won by plaintiff)

F
McFadden v. Sanchez, 710 F.2d 907 (2nd Cir. 1983)
(Won by citizen Plaintiff) Officers liable.

T D
Oaklahoma City v. Tuttle, 105 S.Ct 2427 (1985) cert. denied, 106 C.Ct. 16 (1983).
(won by city)

F
Parrott v. Wilson, 707 F.2d 1262 (11th Cir. 1983)
(Won by officer)

F
Price v. Baker 693 F.2d 952 (10th Cir. 1983)
(Won by sheriff)

SU D T
Rogers v. Rulo, 712 F.2d 363 (8th Cir. 1983)
(Won by officer)

O (corr)
Smith v. Wade, 103 S.Ct. 1625 (1983)
(Won by citizen Plaintiff) Prison, assault by other inmates.

SU D
Ware v. Reed 709 F.2d 345 (5th Cir. 1983)
(Won by citizen Plaintiff)

D
Webb v. Hiykell, 713 F.2d 405 (8th Cir. 1983)
(Won by citizen Plaintiff)

T
Wellington v. Daniels, 717 F.2d 932 (4th Cir. 1983)
(Won by citizen Plaintiff) city held liable.

D
Baker v. St. Luois Board of Police Commissioners, No. 83-2536 (8th Cir. 1984)
(won by defendant officers)

I
Bledsoe v. Garcia, 742 F.2d 1237 (10th Cir. 1984)
(Won by officer)

I
Davis v. Scherer, 468 U.S. 183, 197. 104 S.Ct. 3012 (1984)

(Won by officer)

T
Hopkins v. City of Laramie, Wyo., 730 F.2d 603 (10th Cir. 1984)
(Won by city)

D
Mary beth G. v. City of Chicago, 723 F.2d 1263 (7th Cir. 1984)
(Won by citizen plaintiff)

SE SU R
McKinnon v. City of Berwyn, 750 F.2d 1383 (7th Cir. 1984)
(Won by citizen Plaintiff)

T
Milligan v. City of Newport News, 743 F.2d 227 (4th Cir. 1984)
(won by City)

O
Norris v. District of Columbia, 737 F.2d 1148 (D.C. Cir. 1984)
(Won by citizen Plaintiff)

D
Peraza v. Delameter, 722 F.2d 1455 (9th Cir. 1984)
(Won by citizen Plaintiff)

F
Raley v. Fraser, 747 F.2d 287 (5th Cir. 1984)
(Won by citizen Plaintiff) Officers liable

T SU
Varela v. Jones, 746 F.2d 1413 (10th Cir. 1984).
(won by city)

D
Webb v. Arresting Officers, 749 F.2d 500 (8th Cir. 1984)
(Won by citizen Plaintiff)

D
Webster v. City of Houston, 735 F.2d 838 (5th Cir. 1984)(en banc)
Originally 689 F.2d 1220
(Won by citizen Plaintiff)

T
Wilson v. Beebe, 743 F.2d 342 (6th Cir. 1984)
(Won by citizen Plaintiff)

SU, D

Wing v. Britton, 748 F.2d 494 (8th Cir. 1984)
(Won by officer)

T R D SU
Brandon v. Holt, 469 U.S. 464, 105 S. Ct. 873 (1985)
(Won by citizen Plaintiff)

T D
City of Oaklahoma City v. Tuttle, 471 U.S. 808, 105 S.Ct. 2427 (1985) (initially won by citizen plaintiff against city only, reversed by Supreme Court)

F
Crawford v. Edmonson, 764 F.2d 479 (7th Cir. 1985).
(Won by officer)

F
Davis v. Forrest, 768 F.2d 257 (8th Cir. 1985)
(Won by officer)

I, F
Gilmer v. City of Atlanta, 774 F.2d 1495 (11th Cir. 1985)
(Won by citizen Plaintiff)
D R SU
Grandstaff v. City of Borger, 767 F.2d 161 (5th Cir. 1985) (Won by citizen Plaintiff)

T SU D
Gumz v. Morrissette, 772 F.2d 1395 (7th Cir. 1985)
(won by city)

T SU
Hand v. Dayton-Hudson 775 F.2d 757 (6th Cir. 1985)
(won by plaintiff) city liable

SU
Heller v. Bushey, 759 F.2d 1371 (9th Cir. 1985)
(Won by citizen Plaintiff)

SU, T
Jamison v. Shaw, 772 F.2d 1205 (5th Cir. 1985)
(Won by citizen Plaintiff)

T
Kibbe v. City of Springfield, 777 F.2d 801 (1st Cir.1985)
(won by Plaintiff)

F
Kidd v. O'Neil, 774 F.2d 1252 (4th Cir. 1985)
(Won by citizen Plaintiff)

T D
Leber v. Smith, 773 F.2d 101 (6th Cir. 1985)
(Won by govt)

T D
LeSavage v. White, 755 F.2d 814 (11th Cir. 1985)
(Won by citizen Plaintiff)

F
Lewis v. Downs, 774 F.2d 711 (6th Cir. 1985)
(Won by citizen Plaintiff) officers liable

T,SU
Marchese v Lucas, 578 F.2d 181 (6th Cir. 1985)
(Won by citizen plaintiff)
C

F
Mark v. Caldwell, 754 F.2d 1260 (5th Cir. 1985)
(Won by officer)

T
McCrimmon v. Kane County, 606 F.Supp 216 (N.D. Ill. 1985)
(Won by citizen Plaintiff)

I
Morrison v. City of Batton Rouge, 761 F.2d 242 (5th Cir. 1985).
(Won by city)

T
Owens v. City of Atlanta, 780 F.2d 1564 1564 (11th Cir. 1985)
(won by city)

I
Patzer v. Burkett, 779 F.2d 1363 (8th Cir. 1985).
(Won by citizen Plaintiff)

D
Pruit v. City of Montgomery, Ala., 771 F.2d 1475 (11th Cir. 1985)
(Won by citizen Plaintiff)

T
Rhode v. Denson, 776, F.2d 107 (5th Cir. 1985)
(Won by county)

T
Rock v. McCoy, 663 F.2d 394 (10th Cir. 1985)
(Won by citizen Plaintiff)

SU
Rutherford v. City of Berkeley, 780 F.2d 1444 (9th Cir.1985)
(Won by citizen Plaintiff)

T
Rymer v. Davis, 775 F.2d 756 (6th Cir. 1985)
(Won by citizen Plaintiff)

D
Strauss v. City of Chicago, 760 F.2d 765 (7th Cir. 1985)
(Won by city)

T,D
Tennessee v. Garner 471 U.S. 1, 105 S. Ct. 1694 (1985)
(Won by citizen Plaintiff)

F
United States v. McKenzie, 768 F.2d 602 (5th Cir. 1985)
(won by govt for citizen plaintiff)

T D SU
Vizbaras v. Prieber, 761 F.2d 1013 (4th Cir. 1985)
(Won by officer)

T
Young v. City of Killeen Texas, 775 F.2d 1349 (5th Cir. 1985)
(Won by citizen Plaintiff)

R
Zangi v. Old Brookville, 752 F.2d 42 (2nd Cir. 1985)
(won by city)

SU
Byrd v. Clark, 783 F.2d 1002 (11th Cir. 1986).
(Won by citizen plaintiff)

SU D
City of Los Angeles v. Heller, U.S. _____,106 S.Ct. 2268 (1986)
(won by city)

T,
Daniels v. Williams, 474 U.S. 327, 106 S.Ct. 662 (1986)
(Won by officer)

D
Dunster v. Metropolitan Dade County, 791 F.2d 1516 (11th Cir. 1986)
(Won by county and officer)

SU D

Fiacco v. City of Rensselaer, N.Y., 783 F.2d 319 (2nd Cir. 1986)
(won by citizen plaintiff; officers liable, city liable)

SU,T
Hendrix v. Matlock, 872 F.2d 1273 (5th Cir.1986)
(won by city)

F
H.C. by Hewett v. Gerrard, 786 F.2d 1080 (11th Cir. 1986)
(Won by citizen Plaintiff) Supervisor personally and officially liable.

SU, T
Hinshaw v. Doffer, 785 F.2d 1260 (5th Cir. 1986)
(Won by citizen Plaintiff)

T SU
Maddox v. City of Los Angeles, 792 F. 2d. 1408 (9th Cir. 1986)
(won by city)

SU D
Pembaur v. City of Cincinnati, 475 U.S. 469,106 S.ct. 1292,1298 (1986)
(Won by citizen Plaintiff)

T
Sampson v. Gilmere, ___U.S. _____, 106 S.Ct. 1993 (1986).
(Won by citizen Plaintiff)

T SU
Scarpa v. Murphy, 806, F.2d 326 (1st Cir. 1986)
(Won by city)

F
Waggoner v. Mosti, 792 F.2d 595 (6th Cir 1986)
(Won by citizen Plaintiff)

D
Whitley v. Albers, 475 U.S. 312, 106 S. Ct. 1078 (1986)
(Won by officers)

T
Wierstak v. Heffernan, 789 F.2d 968 (1st Cir.1986)
(Won by citizen Plaintiff) city and officers liable

I
Able v. Miller, 824 F.2d 1522 (7th Cir. 1987)
(Won by officer)

T, I.
Anderson v. Creighton, 107 S.Ct. 3034 (1987)
(Won by officer)

T SU
Anderson v. Roberts, 823 F.2d 235 (8th Cir. 1987)
(Won by citizen plaintiff, sheriff held liable)

D
Cameron v. City of Pontiac, Mich.,813 F.2d 782 (6th Cir. 1987)
(won by city)

D
City of Rensselaer v. Fiacco, 107 S.Ct. 1384 (1987)
(Won by citizen plaintiff)

T SU D
City of Shepherdsville v. Rymer, 107 S. Ct. 1369 (1987)
(Won by citizen plaintiff) (see Rymer v. Davis 754 F.2d 198)

T
Dodd v. City of Norwich, 815 F. 2d 862 (2nd Cir. 1987)
827 F.2d 1 (87)
(Won by city)

T SU D Get Case
Foulds v. Corley, 833 F.2d 52 (5th Cir. 1987)
(Won by citizen Plaintiff)

T SU
Fratiello v. Mancuso, 653, F Supp. 775. (DC RI 1987)
(Won by officer and city)

{G}
F
Garcia v. United States, 826 F. 2d 806 (9th Cir. 1987)
(Won by Govt)

T D
Guider v. Smith, 403 N.W.2d 505 (Mich. App. 1987)
(won by citizen plaintiff)

F
Hagge v. Bauer, 827 F.2d 101 (7th Cir. 1987)
(Won by citizen Plaintiff) officer liable

D
Justice v. Dennis, 834 F.2d 380 (4th Cir. 1987) (en banc)
(won by city)

T D
Lester v. City of Chicago, 830 F.2d 706 (7th Cir. 1987)
(Won by citizen Plaintiff)

I
Martin v.Dallas County, 822 F.2d 553 (5th Cir. 1987)
(Won by citizen Plaintiff)

I, D, T
Martin v. Halhoyt, 830 F.2d 237, 262-63 D.C. Cir. 1987)
(Won by citizen Plaintiff)

T SU SE
Martinez v. Cordova, 676 F. Supp. 1068 (D.N.M. 1987)
(won by city)

SU
Monitor v. City of Chicago, 653 F. Supp 1294 (N.D. Ill, 1987)
(won by city)

E
Nishiyama v. Dickson County, Tenn, 814 F.2d 277 (6th Cir. 1987)
(won by plaintiff)

T, SU
Popham v. City of Kennesaw, 820 F.2.d 1570 (11th Cir. 1987)
(Won by citizen Plaintiff)

F
Ryder v. City of Topeka, 814 F.2d 1412 (10th Cir. 1987)
(Won by city)

T, D, SU
Sherrod v. Berry, 827 F.2d 195 (7th Cir. 1987) No. 85-3151, August 22, 1988, 57 U.S.L.W. 2168 (September 27, 1988)
(Won by officer)

T D
Smith v. City of Fontana, 818 F.2d 1411 (9th Cir. 1987)
(Won by citizen Plaintiff)

T D SU
Spell v. McDaniel, 824 F.2d 1380 (4th Cir. 1987)
(Won by citizen Plaintiff) officers and city liable

F
Summerlin v. Edgar, 809 F.2d 1034 (4th Cir. 1987)
(Won by citizen Plaintiff)

T D
Thomas v. City of Zion, 665 F. Supp. 642 (N.D. Ill. 1987).
(Won by city)

F
Trujillo v. Goodman, 825 F.2d 1453 (10th Cir 1987)
(Won by officer)

F conspiracy
United States v. Messerlian, 832 F. 2d. 778 (3rd Cir. 1987)
(Won by citizen Plaintiff)

SE T SU
Vippolis v. Village of Haverstraw, 107 S.Ct. 1369 (1987)
(Won by city)

T SU
Warren v. Lincoln, 816 F.2d 1254 (6th Cir.1987)
(Won by citizen Plaintiff)

R
Williams v. City of Chicago, 658 F. Supp 147 (N.D. Ill.1987)
(Won by citizen Plaintiff)

T,
Estate of Belew by Belew v. Ruppert, 694 F.Supp 1214 (1988)
(Won by deputy)

I **Boswell v. Sherburne County**, 849 F.2d 1117,(8th Cir. 1988) rehearing denied
(Won by citizen Plaintiff)

T,SU,D
Brown v. City of Clewiston, 848 F.2d 1534 (11th Cir. 1988)
(Won by city)

F
Brumfield v. Jones, 849 F.2d 152 (5th Cir. 1988)
(won by officers)

F
Carter v. City of Chattanooga, 850 F.2d 1119 (6th Cir. 1988)
(Garner not retroactive)
(Won by city)

T
City of Canton, Ohio v. Harris, 108 S.Ct. 1105 (1988)
57 U.S.L.W 4271 (1989)
(won by city)

T D SU
City of Fayetteville N.C. v. Spell, 824 F.2d 1380 (4th Cir 1988) cert. denied, 108 S.Ct. 752 (1988).
(Won by citizen plaintiff)

D
City of St. Louis v. Praprotnik, 108 S.Ct. 915 (1988).
(Won by City)

T I (corr)
Clark v. Evans, 840 F.2d 876 (11th Cir. 1988)
(won by officer)

T
Davis v. Little, 851 F.2d 605 (2d Cir. 1988)
(Won by citizen plaintiff)

T
Dell Fargo v. City of San Juan Bautista, 857 F.2d 638 (9th Cir. 1988) (won by city)

D
Dorsey v. City of Detroit 858 F.2d 338 (6th Cir. 1988)
(won by city)

F
Edward v. City of Philidelphia, 860 F.2d 568 (3d Cir. 1988)
(Won by city)

T D
Ford v. Childers, 855 F.2d 1271 (7th Cir. 1988) (en banc)
(won by officer)

T
Heath v. Henning, 854 F.2d 6 (1988)
(won by plaintiff)

T
Hinojosa v. City of Terrel, Texas, 834 F.2d 1223 (5th Cir. 1988)
(won by city)

F
Johnson v. Moral, 843 F.2d 846 (5th Cir. 1988)
(won by officer)

T SU D
Keller v. Truska, 694 F. Supp. (1384 E.D. Mo. 1988)
(won by officers and city)

T
Klein v. Ryan, 847 F.2d 368 (7th Cir. 1988)
(won by officers)

D
Manning v. Jones 696 F.Supp 1231 (1988)
(Won by officers)

SU D
Martin v. Gentile, 849 F.2d 863 (4th Cir. 1988)
(Won by officer)

D
Martin v. Georgia Department of Public Safety, 108 S.Ct. 685 (1988)
(Won by police)

D I
Martinez v. California, 444 U.S. 277 (1980)
(Won by citizen Plaintiff)

T, SU
Meade v. Grubbs, 841 F.2d 1512 (10th Cir. 1988)
(Won by citizen Plaintiff)

F
Molton v. City of Cleveland, 839 F.2d 240 (6th Cir. 1988)
(Won by citizen Plaintiff)

D SU
O'Neal v. DeKalb County, Ga. , 850, F.2d 1119 (6th Cir. 1988)
(Won by county)

SU D
O'Neil v. Krzeminski, 839 F.2d 9 (2d Cir. 1988)
(Won by citizen Plaintiff)

T
Parker v. District of Columbia, 850 F.2d 708 (D.C. Cir. 1988)
(Won by citizen Plaintiff)

D
Roach v. City of Fredericktown, 693 F.Supp. 795 (E.D.Mo.1988)
(Won by city)

T
Robinette v. Barnes, 854 F.2d 909 (6th Cir. 1988)
(Won by officer)

T I
Robinson v. Bibb, 840 F.2d 349 (6th Cir. 1988).
(Won by citizen Plaintiff)

T
Roose v. State 759 P.2d 478 (Wyo. 1988)
(won by officers)

I
Thorsted v. Kelly, 858 F.2d 571 (9th Cir. 1988)
(won by officer)

D
Washington v. Starke, 855 F.2d 346 (6th Cir. 1988)
(Won by officer)

O
Wood v. Ostrander, 851 F.2d 1212 (9th Cir. 1988)
(Won by citizen Plaintiff)

F,
Bell v. City of Milwaukie, 746 F.2d 1205, 1279 (7th Cir. 1989)
(Won by citizen plaintiff)

F,I
Brandenburg v Cureton, 882 F.2d 211 (6th Cir. 1989)
(won by officers)

T D
Brower v. County of Inyo, U.S. , 109 S.Ct. 1378 (1989)
(Won by citizen Plaintiff)

F
Brown v. Glossip, 878 F.2d 871 (5th cir. 1989)
(won by citizen plaintiff)

F,I
Chathat v Smith 884 F.2d 980 (7th Cir. 1989)
(won by officer)

T, D
Davis v. City of Ellensburg, 869 F.2d 1230 (9th Cir. 1989)
(Won by officers and city)

D
Fletcher v. O'Donnell, 867 F.2d 791 (3rd Cir. 1989)

(Won by citizen Plaintiff)

Graham v. Connor, U.S. ,109 S.Ct 1865 (1989)
(Won by citizen Plaintiff)

F
Jackson v. Crews, 873 F.2d 1105 (1989)
(won by citizen plaintiff)

SE
Parker v. Williams, 862 F.2d 1471 (11th Cir.1989)
(won by plaintiff) city and sheriff liable