Firearms training related case law

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The two most common theories of liability are;

1) Common-law negligence

2) Violation of civil rights **42 U.S.C. Sec. 1983 –** A post civil war statute that prohibits the deprivation of federally protected rights by any "person" acting under color of state law.

The substance of most litigation is usually;

1) Department and/or instructors omitted vital subjects from training curriculum.

2) Failed to raise the trainees to a sufficient level of proficiency.

3) Taught obsolete and/or dangerous techniques or policies.

4) City or county had a deliberate policy of improper training.

5) Officials responsible for department training acted with reckless disregard for the inadequacies of the training program.

The defendants named in these types of torts are;

1) City or county

2) Police Chief / Sheriff

3) Individual officer

4) Instructor

   a) Each defendant may be able to escape liability by shifting the blame, such as the officer contending he/she was <u>merely performing as trained</u>. Also, there is an incentive to point fingers at the instructor.

In **Tuttle vs. Oklahoma, 728 F. 2d 456 (10TH CIR 1984)**

the court held that for law enforcement firearm's training to be valid, it must incorporate;

1)	stress	6)	shoot-don't-shoot
2)	decision making	7)	moving targets
3)	attitude	8)	officer required to move
4)	knowledge	9)	low light or adverse light shooting
5)	skill	10)	in-service training
		11)	shotgun training

In **Tuttle vs. Oklahoma** the court strongly suggested the need for realistic firearms training. However, the court also held that a single incident of police misconduct does not prove or constitute inadequate training.

In **Popow vs. City of Margate, 476 F SUPP. 1237 (D.N.J. 1979)**

the court held that the firearm's training received was inadequate for the circumstances officers had to operate under. More specifically, the court said that training needs to include;

a) moving targets

b) low light or adverse light shooting

c) residential areas

or any experience with film or simulations designed to teach the practical application of deadly-force decision making. The court held that firearm's training should also include instruction on State Laws, City Regulations, (and/or policies) on shooting, and how they are applied in practice. The court also held that firearms training must be given on a continual basis.

In the above case the court did not define what constitutes "continual training". Again, our current firearm's training does not incorporate any of the above issues.

In **City of Canton Ohio vs. Harris, 489 U.S. 378, 109 S. CT. 1197 (1989)**

the Supreme Court stated that " A Municipality's inadequate training may give rise to 42 U.S.C., section 1983 liability when it is deliberately indifferent to the rights of the city's inhabitants and actually causes the plaintiff's injury". The Court enumerated as one example of deliberately inadequate training as " instances in which the need for more of different training is obvious and the inadequacy is likely to result in the violation of constitutional rights…".

This case illustrated the dire need to properly and continually train police officers,

especially in the area of firearms training. The proper training the courts have referred to has been described in above court cases.

In **Zuchel vs. City and County of Denver, Colorado (997 F. 2d 730, 10th Circuit Court)**

In this case a plaintiff's son had been shot four times at close range by a city police officer during a street disturbance, and died. The plaintiff settled claims against the police officer before the trial, and the jury considered only federal civil rights claims against the city. The jury awarded $330,000.00 in damages, finding that the department's training program, which constituted only a movie and a lecture on the use of deadly force, was constitutionally inadequate.

A federal appeals court has upheld this result, finding that the inadequate training provided indicated that the city was "deliberately indifferent" to the need for more training on the use of deadly force. The court found sufficient evidence in the record to show that the officer's use of deadly force was unjustified, including testimony that the officer had his weapon out while the decedent was facing away from him with his hands in the air. The appeals court also criticized the city's lack of "live" drills providing practice on when to shoot or not to shoot, in addition to movies and lectures.

"Viewing the above evidence most favorably to plaintiffs", the court concluded, "it is clearly sufficient to support the jury's determination that the Denver police training program in place prior" to the shooting "was inadequate, and that a direct connection existed between the inadequacy and the shooting."

The court held that Denver PD was " Deliberately Indifferent " to the need for better firearm's training of it's officers. The court also stated that this inadequate training led to an officer's fatal shooting of an unarmed citizen.

In **McCelland vs. Facteau 610 F. 2d 693 (1979)**

The court ruled that " Police Chiefs may be held liable if they breach their duty to train subordinates and establish department procedures that will provide protection for constitutional rights.

In **Gibson vs. City of Chicago, 701 F. SUPP. 666 (N.D. IL, 1988)**

the court held that whether or not an officer is on or off-duty is not the key for municipal liability, but whether the officer is performing a law enforcement function.

This case illustrated the need for agencies to train their officers in the legal justification of performing/acting in the capacity of a Police Officer while off-duty.

In **Voutour vs. Vitale, 761 F.2d 812 (1st Cir. 1985)**

The court allowed a jury's conclusion to stand that undocumented 'reserve' police training and military training did not constitute adequate training for officers. The court

stated "It seems likely that police training, in addition to teaching proficiency in the use of handguns, would include training as to the circumstances in which a police officer should not shoot".

In **Monell vs. New York City (1978 Supreme Court Decision)**

Most generally, ***Monell*** holds that plaintiffs who can prove that the civil rights violations they suffered at the hands of government employees were the result of serious shortcomings in agency custom and practice----such as deficient supervision or training----may recover damages from government treasuries as well as from the employees involved. The effect of this decision, in other words, was to open government's deep pockets to plaintiffs and to hold police agencies accountable in the courts for formulating and enforcing reasonable standards of police behavior.

Monell, therefore, brings to discussion the appropriate means of evaluating police conduct. When juries in civil suits examine police actions, the precise standard they employ is:

> *On the basis of information available at the time, did the police act in a manner that is congruent with their primary responsibilities to protect life, rights, and property and to preserve order, in that priority?*

When the answer to this question is negative, juries ask a second, similar question:

> *Was the unreasonable police action a predictable result of supervisory and training practices so deficient that they were not congruent with the primary responsibilities to protect life, rights, and property and to preserve order, in that priority?*

Monell provides a powerful incentive for police to assure that their officers' actions and the policies and practices that guide officers can pass the test of reasonableness.

Davis v. Mason County (WL 31291, 1991, 9th Circuit Court of Appeals)

(927 F. 2d 1473 (9th Circuit 1991)

In this case plaintiffs sued the county alleging that sheriff's deputies used excessive force in four separate incidents and that the officers' actions resulted in part from inadequate training. The department produced evidence that a training program existed, but a jury returned a verdict for the plaintiffs.

In sustaining the jury verdict of inadequate training against the department, the Federal appellate court noted several important factors. First, some officers on the department never attended the State training academy, and although the department devised a "field training program" as a substitute for attendance at the State academy, no evidence existed to prove that it was seriously implemented. Second, two training officers quit the department, describing the training program as a "joke". And, third, the deputies "received no training in the constitutional limits on the use of force." Therefore, the court concluded:

> "The training that the deputies received was woefully inadequate, if it can be said to have existed at all…the deprivation of plaintiffs' Fourth Amendment rights was a direct consequence of the inadequacy of the training the deputies received."

Acosta vs. City and County of San Fransico (83 F. 3d 1143, 9th Circuit 1996)

In this case a Federal Appeals Court reinstated a jury's $259,358.19 judgement against the officer for shooting and killing driver of a car making an escape from an alleged purse snatching. The jury necessarily found that officer could not have reasonably believed himself in danger from a slow moving vehicle, and accordingly officer was not entitled to qualified immunity.

This case illustrates the need to train officers on constitutional limitations of the use of deadly force.

Lundren vs. McDaniel (814 F. 2d 600, 11th Circuit 1987)

The court held that the deputies who shot and killed a store, owner while responding to what they believed was a burglary in progress were responsible for their actions. The Sheriff of the county was equally at fault since training and supervision falls within his realm of responsibility.

This case points to the need for decision type shooting training.

Brandon vs. Holt (469 U.S. 105 S Ct. 873, 83 L Ed. 2d 878)

The court held that a judgement against a "Public Servant" who was acting in his official capacity imposes liability on the entity that he represents.

McKinnon vs. City of Berwyn (750 F 2d, 1385, 7th Circuit 1984)

The court held that a Police Chief was liable for failure to properly supervise his officers.

Rymer vs. Davis (754 F. 2d 198, 6th Circuit 1985)

The court held that a City's failure to adequately train officers regarding arrest

procedures was a proper basis for liability if there is a showing of casual connection between the failure to train and the conduct of the officer.

Dodd vs. City of Norwich (815 F. 2d 862, 2nd Circuit 1987)

The court held that the city's policy of having an officer draw and hold it on a suspect while handcuffing him was negligent. According to the court, this action invited the suspect to lunge at the weapon and be shot.

McLeod vs. City of Philadelphia (U.S. District Ct., No. 94-7495, Oct. 6, 1995, 39 ATLA L. Rptr. P. 56, March 1996)

This case involved a 2.2 million dollar settlement in a case where a police officer allegedly shot a man who was helping a store clerk who had been shot during a robbery.

This case illustrates the need to train officers in shoot no-shoot situations.

Watson vs. City of Los Angeles (No. BC085132, L.A. Superior Central Ct., California, Dec. 29, 1995, L.A. Daily Journal Verdicts & Settlements, Vol. 109, No. 77, p.5, April 19,1996)

In this case a jury awarded a man $4,911,668 who was shot and rendered a paraplegic by the officer pursuing him as he fled from a stopped vehicle, because of outstanding warrants and illegal possession of a firearm. The plaintiff claimed he had abandoned the weapon before the officer shot him. Subsequently, a $3.5 million settlement was agreed to.

This case illustrates the need to train officers in the constitutional limitations on the use of deadly force and department policy on the use of deadly force.

Camacho vs. City of Cudahy (VC009187, La. Superior Ct., March 31, 1994)

In this case the city was held liable for a $4,370.000 settlement to surviving family of a man shot and killed by officer responding to a domestic disturbance call who thought a stick in the man's hand as he came out of an apartment was a rifle.

This case illustrates the need to train officers in shoot no-shoot situations.