

Hardening the Target:

The Role of Policy and Leadership in Reducing Agency Liability

By Chief Louis M. Dekmar

An IACP Leading by Legacy Webinar



Webinar Panelist

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Learning Objectives

- ❑ At the conclusion of this webinar, attendees will be able to:
 - ❑ Understand the origins and scope of agency liability in existing case law
 - ❑ Identify high liability areas within the agency
 - ❑ Examine leadership strategies to mitigate liabilities

42 U.S.C. § 1983

Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983

- 1. Violation of federally protected right**
- 2. Person acting under color of law**
- 3. Damages resulting**

Why file a 1983 suit?

Monell v. Department of Social Services
1978

Elements of Agency Liability

1. Formal rules, policies, ordinances
2. Custom or practice
3. A single decision from the final policymaker
4. Failure to train

Failure to Train

- Plaintiff can point to a specific deficiency where the need is patently obvious
- Plaintiff can point to a pattern of conduct that should have put final policy maker on notice of need for training

U.S. Supreme Court

CANTON v. HARRIS, 489 U.S. 378 (1989)

"a municipality is liable for failure to train its police force, [where] the plaintiff . . . prove[s] that the municipality acted recklessly, intentionally, or with gross negligence."

We hold today that the inadequacy of police training may serve as the basis for 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact.

Liability

Hiring

Supervision

Retention

Train

Entrustment

Assignment

Direct

Discipline

Investigate

Protect

Treat

Classification

What about an accidental result?

Qualified Immunity (11th Cir.)

When **governmental officials are sued in their individual or personal capacities** qualified immunity may attach. Governmental officials who perform discretionary functions, generally are shielded from liability for civil damages insofar as their **conduct does not violate clearly established statutory or constitutional rights** of which a reasonable person would have known. The question of qualified immunity is a **purely legal issue for the trial judge to determine before trial**. The question of whether a government official will be protected by qualified immunity is generally determined by the objective legal reasonableness of his or her action in light of clearly established law. The **right the official is alleged to have violated must have been clearly established** in a more particularized, and hence more relevant, sense: The right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that **in the light of pre-existing law the unlawfulness must be apparent**.

Qualified Immunity

“Qualified immunity operates to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful.”

Saucier v. Katz, 533 U.S. 194, 206 (2001)

How many policies?

12 Critical Tasks

Off-Duty Conduct

Sexual Harassment-Discrimination

Selection/Hiring

Internal Affairs

Special Operations

Dealing with the Mentally ill

Use of Force

Search/Seizure-Arrest

Pursuit/EVOC

Domestic Violence

Property-Evidence

Care, Custody, Control/Restraint of Prisoners

Employing the “Goober Rule”

and

Addressing Individual Conduct

Avoiding Liability through Policy involves Several Steps

1. Write policy
2. Training using policy as basis
3. Supervision (Positive)
4. Discipline and reinforcement
5. Review and revision of policy
6. Legal support and updates

A Legacy of Engaged Leadership will insure the
publics confidence and provide a sound
foundation for an agency's employees...

It is not left to chance.

Questions?

1. Legally, how do you demonstrate that your policy and practice are the same?

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