



***10-8: Life on the Line
- with Charles Remsberg***

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A way to stop legal issues before they start

A new breed of legal eagles called Certified Litigation Specialists are helping police agencies win civil litigation cases

In the sharks' pool that is our civil justice system, getting bitten by lawsuits seems inevitable. One study reveals that it's not unusual for half or more of the officers in a given agency to be sued at least once in a five-year period, with some named in multiple actions. Of course, their administrators and their presumably deep-pocket government entities are almost always dragged into the feeding frenzy as defendants as well.

Before they're targeted — or targeted again — a growing number of agencies are cultivating a new breed of in-house professionals to ease the challenge of successfully defending — perhaps even preventing — devastating legal actions.

These rarely are police attorneys. More likely, they're street officers or supervisors, in-service instructors, or command executives who are trained specifically to keep abreast of developments in the legal arena and to smoke out correctable departmental vulnerabilities before they become painfully proven liabilities.

These staffers carry the title Certified Litigation Specialist (CLS), and while their responsibilities generally are part-time, their benefit can be significant. "Having people on staff who have received special professional training can help an agency properly handle such matters as public complaints and lawsuits

from the outset,” says Greg Meyer, former commanding officer of the prestigious LAPD training academy who now teaches and testifies in civil rights suits and criminal cases as a police procedures expert.

Meyer, who is also a PoliceOne Columnist, adds, “This can lead to considerable cost savings during these expensive processes.”

Al Youngs, a lawyer in the Denver area who retired as deputy chief of the Lakewood (Colo.) PD, agrees. “Every law enforcement agency with 50 or more officers should have a designated litigation specialist,” he declares. Other observers claim that even smaller agencies have much to gain from having CLS expertise in their operations.

How the Litigation Flood Began

The current tsunami of police litigation originated 35 years ago with a critical amendment to the federal Civil Rights Act of 1871. That change mandated that plaintiffs who successfully sue LEOs, public officials, or local governments for deprivation of their constitutional rights could recover separate fees for their attorneys and expert witnesses.

That meant that lawyers no longer had to settle for a portion of what a plaintiff was awarded — usually a one-third “contingency fee” which might prove inconsequential in minor verdicts — but could instead collect based on the hourly rates customarily billed for legal work in their communities, so long as their clients won a judgment of at least \$1.

Where lawyers had once been restrained for fear of insufficient compensation for their considerable time and effort, many now were eager to sue law enforcement on behalf of plaintiffs over even minor alleged misdeeds. An explosion of civil rights lawsuits erupted that continues to this day.

Typical Defense Shortcomings

The International Association of Chiefs of Police has warned that litigation can be “extremely expensive and harmful to the reputation” of agencies and their employees. It has noted that LEOs and their agencies “have a duty to remain current” on legal matters, recommending that “any pertinent new information should be disseminated throughout the ranks so that all officers are operating

with current knowledge.” A well-informed agency, the IACP has stressed, “is less likely to take actions that may end up the subject of litigation.”

Yet many law enforcement entities still lack a strategy for minimizing the risk of future lawsuits or for efficiently managing current claims.

Typically, civil summonses are simply sent to the government entity’s attorney, who often directs an assistant or an outside law firm to respond to the litigation. The targeted agency and other defendants may not be much involved as the case progresses, absent specific inquiries and requests from defense counsel.

If the defense’s legal team loses or settles a case, there rarely is any remedial action, such as disciplinary sanctions against an errant officer, correction of an agency’s policies or procedures, or revision of a deficient training curriculum. Government staff attorneys often lack the time to oversee such corrective action, and the billing clock stops for outside counsel once a case is concluded.

Even within major city or county police agencies that have an established legal research unit in place, shortcomings often exist. Management may designate one or more officers to liaison among defendants, defense counsel, internal affairs, training, and the chief’s office. But often these officers are not properly trained in how to coordinate the myriad of tasks involved — and the outcome of litigation is jeopardized.

Key Players, Proactively and Reactively

An in-house litigation specialist who is properly trained and certified can bring multiple strengths to bear in volatile circumstances that could easily turn disastrous if mismanaged.

Part of the CLS’s job is proactive; after all, preventing legal fires is as important as suppressing them. Thus one CLS responsibility is to monitor the agency for vulnerabilities and, hopefully, diminish its legal risks.

For instance, a litigation specialist must be thoroughly conversant with an agency’s trained tactics, policies, and procedures. And he must be familiar with national training standards, guidelines, and recommendations, as well as

manufacturers' warnings and law enforcement-related court decisions, so he can assist in identifying inadequacies or deficiencies within his organization. "It's important," says Youngs, "to have someone on board who is aware of current cases and training mandates and who can see that this information gets disseminated throughout the department."

This kind of input can be invaluable to any agency, regardless of size, argues Ken Katsaris, a former sheriff and police officer in Florida who has assisted hundreds of agencies in recent years as a legal consultant.

"Even the smallest agencies have a great need for a litigation specialist," he says, "not because they are sued often but because when they are sued they can be especially vulnerable. Small agencies often don't have the staff or resources to write comprehensive policies, procedures, and tactics. Policies, once adopted, are often not periodically reviewed and improved. This can prove devastating in court. "

Assigning a well-trained officer to serve as a part-time CLS can be a productive demonstration of an agency's sincere efforts at risk management." In event of a lawsuit, the specialist works closely with defense counsel. He recovers pertinent training records of officers who are sued, and copies applicable lesson plans used by pre-service and in-service instructors. He can identify actions taken — or not taken — by officers and evaluate whether they conformed to the agency's rules, practices, national standards/guidelines, and training.

If a plaintiff challenges the adequacy of training or procedures, the CLS assists defense counsel in identifying one or more outside experts to defend the department's training and regulations.

After a lawsuit ends, the litigation specialist interviews defense counsel and sends a summary of the proceedings to the agency chief, the training director, and the commander of the unit that drafts policy and procedure directives. In this summary, it's important that the CLS document what the agency did right as well as what might have been done wrong.

The agency, of course, needs to promptly modify any inadequacies identified. Otherwise, future plaintiffs may be able to charge that management was on notice but was "deliberately indifferent" to problems, thereby increasing its

legal vulnerability. (Some administrators believe that such changes, especially if made during litigation, may be used against them by opposing counsel. But in truth, corrective action taken after an incident is not admissible into evidence.)

Where is CLS Training Available?

Currently only one educational organization offers seminars and certification for litigation specialists: Americans for Effective Law Enforcement, headquartered in suburban Chicago. Through its highly respected Law Enforcement Legal Center, AELE has presented seminars on police and jail liability for more than three decades. It also publishes four free online legal periodicals and hosts a free law library of more than 30,000 case summaries at www.aele.org.

AELE has conferred the Certified Litigation Specialist designation since 2002. At present it certifies litigation specialists in three categories: police liability, corrections liability, and campus law enforcement.

Each CLS graduate receives a comprehensive and exclusive Instructor's Guide to Police Use-of-Force Law on CD-ROM to facilitate in-house training back at the CLS's agency. The Guide includes a dozen up-to-the-minute legal outlines on force issues, special operations, suicide by cop, K-9s, and other relevant topics.

“This material, coupled with the required AELE training programs, enables a certified specialist to provide his or her criminal justice organization with contemporary, in-depth knowledge about current and future high-risk issues confronting agencies and officers,” says AELE's executive director Wayne Schmidt.

Dr. John Peters, president of the Institute for the Prevention of In-Custody Deaths, has been certified as a litigation specialist in all three of AELE's categories. He lists six benefits he believes an agency gains from having a CLS on staff:

1. Enables your organization to conduct environmental scanning that helps identify liability issues that have plagued other organizations and that may threaten yours .

2. Facilitates your access to current court cases and your contact with AELE trainers regarding high-liability issues your agency may face now or in the future
3. Enhances your organization's capability of "thinking outside the box" regarding collateral issues that may have legal implications (e.g., inter-agency agreements, internal affairs matters, etc.)
4. Opens the opportunity to contact other AELE-certified specialists and reduce the time required to conduct literature reviews and to get answers to pressing problems
5. Promotes an affirmative defense for your agency by demonstrating that it uses a trained specialist to identify and plan intervention strategies to minimize "failure to train," "deliberate indifference," and similar liability issues
6. Puts an agency in the "have" category, and not the "have not" category. No one wants to be in the "have not" category in today's litigious climate

AELE's CLS training is subject to continuous oversight through an Academic Committee, chaired by Judge Emory A. Plitt Jr. of Maryland. Before his appointment to the bench, Plitt had more than 25 years of experience in defending police officers, correctional officers, and sheriff's deputies.

For a specimen Special Order creating a position of litigation manager within an agency, go to www.aele.org/litigation.pdf

For more information on the certification program, visit www.aele.org/cls-info.html



About the author

Charles Remsberg co-founded the original Street Survival Seminar and the Street Survival Newsline, authored three of the best-selling law enforcement training textbooks, and helped produce numerous award-winning training videos.

His nearly three decades of work earned him the prestigious O.W. Wilson Award for outstanding contributions to law enforcement and the American Police Hall of Fame Honor Award for distinguished achievement in public service.

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