Managing & Justifying Your Firearms and Training Program

2011 IALEFI Annual Training Conference
West Palm Beach, Florida
TO PROPERLY MANAGE & JUSTIFY YOUR TRAINING PROGRAM,

YOU NEED TO...
1. UNDERSTAND BASIC CASE LAW FOR A FEW CRITICAL CASES!
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2. UNDERSTAND HOW THESE CASES APPLY TO YOUR TRAINING PROGRAM.
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2. UNDERSTAND HOW THESE CASES APPLY TO YOUR TRAINING PROGRAM.

3. KNOW WHAT TO DOCUMENT AND HOW TO DOCUMENT IT.
1. UNDERSTAND BASIC CASE LAW FOR A FEW CRITICAL CASES!

2. UNDERSTAND HOW THESE CASES APPLY TO YOUR TRAINING PROGRAM.

3. KNOW WHAT TO DOCUMENT AND HOW TO DOCUMENT IT.

4. KEEP SOME HANDY TEMPLATES AVAILABLE THAT USE THESE CASES AND EXAMPLES.
UNDERSTANDING BASIC CASE LAW AND HOW IT APPLIES TO TRAINING!
*** UNDERSTANDING BASIC CASE LAW ***

1. CITY OF CANTON, OHIO vs HARRIS

2. POPOW vs CITY OF MARGATE

3. OKLAHOMA CITY vs TUTTLE

4. GRAHAM vs CONNOR

5. TENNESSEE vs GARNER
*** UNDERSTANDING BASIC CASE LAW ***

1. **CITY OF CANTON, OHIO vs HARRIS**

2. **POPOW vs CITY OF MARGATE**

3. **OKLAHOMA CITY vs TUTTLE**

4. **GRAHAM vs CONNOR**

5. **TENNESSEE vs GARNER**
Justifying Your Firearms and Training Programs

*** UNDERSTANDING BASIC CASE LAW ***

CITY OF CANTON, OHIO vs HARRIS

FAILURE TO TRAIN
1978: Geraldine Harris was arrested and brought to the police station where she slumped to the floor on 2 occasions. When asked if she needed medical attention, she responded with an incoherent remark. No medical attention was called for. She was released after an hour and her family took her to a local hospital where she was hospitalized for a week for several emotional ailments and treated as an outpatient for an additional year.
CITY OF CANTON, OHIO vs HARRIS

NOTE: A SUPREME COURT CASE - APPLIES TO ALL STATES!

CLAIM: Geraldine Harris later sued the City of Canton, Ohio seeking to hold the city liable for its violation under the “Due Process Clause of the 14th Amendment” to receive necessary medical attention while in police custody.

TRIAL: Municipal policy was to authorize the shift commanders sole discretion whether a detainee required medical attention. Testimony suggested no special training was provided to make this decision.
*** UNDERSTANDING BASIC CASE LAW ***

CITY OF CANTON, OHIO vs HARRIS

NOTE: A SUPREME COURT CASE - APPLIES TO ALL STATES!

SUPREME COURT JUSTICE WHITE DELIVERED THE OPINION OF THE COURT...

We hold that, under certain circumstances, a municipality can be liable for constitutional violations resulting from its failure to train municipal employees.
HOW DOES THIS APPLY TO YOU?

Although it’s the municipality that is liable, it is your responsibility to insure that an appropriate training program is in place that adequately protects the municipality from potential liability.
Justifying Your Firearms and Training Programs

*** UNDERSTANDING BASIC CASE LAW ***

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*** UNDERSTANDING BASIC CASE LAW ***

POPOW vs CITY OF MARGATE

Realistic Situation Training
1979: Darwin Popow was shot dead by a City of Margate police officer who was pursuing another man he believed to be a fleeing kidnapper when Popow stepped outside his home onto a residential street in response to the commotion.
NOTE: A FEDERAL COURT CASE - APPLIES TO ALL STATES!

CLAIM: The officer used excessive force and acted in a “reckless, malicious, unlawful, and negligent manner”, which caused the death of Darwin Popow.

TRIAL: Both officers testified that they had no knowledge if the suspect was armed, no reason to fear for their lives, and had not witnessed the suspect commit the felony. Last officer training was 2 years earlier and had included no training in shooting decisions in residential areas.
*** UNDERSTANDING BASIC CASE LAW ***

POPOW vs CITY OF MARGATE

NOTE: A FEDERAL COURT CASE - APPLIES TO ALL STATES!

FEDERAL DISTRICT JUDGE BROTMAN DELIVERED THE OPINION OF THE COURT...

We hold that firearms training was inadequate and must include “moving targets”, “low or adverse light shooting”, “residential”, “deadly force decision-making”, instruction on State Laws, City Regulations, policies on shooting and do so on a continuous basis.
*** UNDERSTANDING BASIC CASE LAW ***

POPOW vs CITY OF MARGATE

NOTE: A FEDERAL COURT CASE - APPLIES TO ALL STATES!

HOW DOES THIS APPLY TO YOU?

Simple target shooting type training (i.e. putting rounds down-range) is not adequate firearms training. There needs to be task related training involving realistic situations that officers will be expected to perform under.
**UNDERSTANDING BASIC CASE LAW**

1. CITY OF CANTON, OHIO vs HARRIS
2. POPOW vs CITY OF MARGATE
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*** UNDERSTANDING BASIC CASE LAW ***

OKLAHOMA CITY vs TUTTLE

Inadequate Training
1985: Albert Tuttle was shot and killed outside a bar by an Oklahoma City police officer responding to an anonymous call that a robbery was on-going at this bar.
**UNDERSTANDING BASIC CASE LAW**

**OKLAHOMA CITY vs TUTTLE**

**NOTE:** A SUPREME COURT CASE - APPLIES TO ALL STATES!

**CLAIM:** The officer and city actions had deprived Albert Tuttle of certain constitutional rights.

**TRIAL:** Officer’s training included only 24 minutes of instruction on how to answer calls concerning a robbery in progress. The officer himself seemed to believe that he had been inadequately trained.
*** UNDERSTANDING BASIC CASE LAW ***

OKLAHOMA CITY vs TUTTLE

NOTE: A SUPREME COURT CASE - APPLIES TO ALL STATES!

SUPREME COURT JUDGE REHNQUIST DELIVERED
THE OPINION OF THE COURT...

The jury returned a verdict in favor of the officer but against the city and awarded $1.5M in damages and held that proof of a single incident of unconstitutional activity by a police officer could suffice to establish municipal liability because of a concious choice of a training program that would prove to be totally inadequate.
**JUSTIFYING YOUR FIREARMS AND TRAINING PROGRAMS**

*** UNDERSTANDING BASIC CASE LAW ***

OKLAHOMA CITY vs TUTTLE

NOTE: A SUPREME COURT CASE - APPLIES TO ALL STATES!

HOW DOES THIS APPLY TO YOU?

While you wouldn’t **THINK** that a single incident of gross negligence would constitute a “policy” which would expose the municipality to liability, this case proves that an inadequate training program amounts to liability due to the potential of occurrences due to inadequate training.
*** UNDERSTANDING BASIC CASE LAW ***

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GRAHAM vs CONNOR

Objective Reasonableness
1989: A diabetic, Dethorne Graham, sustained multiple injuries from a police officer suspecting Graham was resisting arrest while being detained in handcuffs due to Graham's erratic behavior.
CLAIM: **Excessive use of force.**

TRIAL: Suspecting something was amiss, the officer makes an investigative stop of Graham’s vehicle and orders Graham and friend to wait while he checks with the store. Graham got out of his car and ran around his vehicle several times before passing out on the sidewalk. Other officers arrived and handcuffed him due to his strange behavior. After the store reported no issues, Graham was released.
*** UNDERSTANDING BASIC CASE LAW ***

GRAHAM vs CONNOR

NOTE: A SUPREME COURT CASE - APPLIES TO ALL STATES!

SUPREME COURT JUDGE REHNQUIST DELIVERED THE OPINION OF THE COURT...

We reject that all excessive use of force claims are held to a single standard. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20-20 vision of hindsight as seeming unnecessary in the peace of the judge’s chambers.
**UNDERSTANDING BASIC CASE LAW**

**GRAHAM vs CONNOR**

**NOTE:** A SUPREME COURT CASE - APPLIES TO ALL STATES!

HOW DOES THIS APPLY TO YOU?

It is imperative that officers be adequately trained in objective reasonableness using (1) perceived circumstances, (2) perceived subjects actions and (3) a reasonable officer’s response because the Constitution does not require officers to be right, only reasonable - and reasonable from the officer’s perspective based on the above Totality Triangle.
*** UNDERSTANDING BASIC CASE LAW ***

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TENNESSEE vs GARNER

Judgmental Training
(Shoot – Don’t Shoot)
1985: Acting under a state statute, a Memphis police officer shot and killed Edward Garner. After being told to halt, Garner attempted to flee over a fence at night in the back yard of a house he was suspected of burglarizing.
CLAIM: Excessive use of force.

TRIAL: Officer responded to a breaking & entering call. A neighbor indicated the house next door was being broken into. The officer heard a door slam and saw Edward Garner running across the back yard. Officer yelled to halt at which point Garner attempted to flee over the fence. The officer clearly observed Garner carried no weapons but, fearing Garner would evade capture, shot and killed Garner.
**UNDERSTANDING BASIC CASE LAW**

**TENNESSEE vs GARNER**

**NOTE:** A SUPREME COURT CASE - APPLIES TO ALL STATES!

SUPREME COURT JUDGE WHITE DELIVERED THE OPINION OF THE COURT...

Deadly force may not be used to prevent escape of a fleeing felon unless the officer has probable cause to believe the suspect poses a significant threat of death or serious physical injury to the officer or others.
*** UNDERSTANDING BASIC CASE LAW ***

TENNESSEE vs GARNER

NOTE: A SUPREME COURT CASE - APPLIES TO ALL STATES!

HOW DOES THIS APPLY TO YOU?

It is a perfect case for justifying and including Judgmental Training as part of your training program.
*** UNDERSTANDING BASIC CASE LAW ***

EXAMPLES OF CASES LOST
*** EXAMPLES OF CASES LOST ***

**Zuchel vs. City and County of Denver, Colorado**

Plaintiff's son was shot and killed by a city police officer during a street disturbance. 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 damages of $330,000.00, finding that the department's training program, which constituted of only a movie and a lecture on the use of deadly force, to be constitutionally inadequate.

Federal appeals court upheld this result, finding that the training provided was inadequate and indicated that the city was "deliberately indifferent" to the need for more training on the use of deadly force. The court found sufficient evidence to show that the officer's use of deadly force was unjustified. The appeals court criticized the city's lack of "live-fire shoot/no-shoot drills" to provide practice on when to shoot or not to shoot.
Lundren vs. McDaniel

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 underlines the need for shoot/no-shoot training.
*** EXAMPLES OF CASES LOST ***

McLeod vs. City of Philadelphia

This case involved a $2.2 million settlement. A police officer shot a man who was helping a store clerk who had been shot during a robbery.

This case illustrates the need for shoot/no-shoot training.
Justifying Your Firearms and Training Programs

*** EXAMPLES OF CASES LOST ***

**Watson vs. City of Los Angeles**

The jury awarded $4.9M to a man 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 his weapon before the officer shot him.

This case underlines the need to train officers in the constitutional limitations of the use of deadly force and in proper application of department policy on the use of deadly force.
Camacho vs. City of Cudahy

City held liable for a $4.37M settlement to the surviving family of a man shot and killed by an officer responding to a domestic disturbance call. The officer thought a stick in the man's hand was a rifle.

This case underlines the need for shoot/no-shoot training.
*** EXAMPLES OF CASES LOST ***

Acosta vs. City and County of San Francisco

In this case a Federal Appeals Court reinstated a jury's $260k judgment against the officer for shooting and killing the driver of a car making an escape from an alleged purse snatching. The jury necessarily found that the officer could not have reasonably believed himself in danger from a slow moving vehicle, and accordingly, the officer was not entitled to qualified immunity.

This case illustrates the need to train officers on constitutional limitations of the use of deadly force.
Justifying Your Firearms and Training Programs

CASE LAW

DICTATES

WHY WE TRAIN!

WHAT WE TRAIN!

HOW WE TRAIN!

... BY THE CASES WE LOSE!
...AND WE LOSE CASES

BECAUSE WE EITHER

DIDN’T TRAIN PROPERLY

OR WE

DIDN’T PROPERLY DOCUMENT!
1. UNDERSTAND BASIC CASE LAW FOR A FEW CRITICAL CASES!

2. UNDERSTAND HOW THESE CASES APPLY TO YOUR TRAINING PROGRAM.

3. KNOW WHAT TO DOCUMENT AND HOW TO DOCUMENT IT.

4. KEEP SOME HANDY TEMPLATES AVAILABLE THAT USE THESE CASES AND EXAMPLES.
Justifying Your Firearms and Training Programs

KNOW WHAT AND HOW TO DOCUMENT!
Justifying Your Firearms and Training Programs

*** KNOW WHAT AND HOW TO DOCUMENT ***

1. ESTABLISH & DOCUMENT YOUR TRAINING GOALS & OBJECTIVES

2. CREATE & DOCUMENT YOUR TRAINING LESSON PLANS

3. DOCUMENT THE EXECUTION OF YOUR TRAINING LESSON PLANS

4. ALLOW FOR AND DOCUMENT ANY CHANGES TO YOUR LESSON PLANS

5. DOCUMENT YOUR FIREARMS & EQUIPMENT INVENTORY

6. DOCUMENT ALL MAINTENANCE
Justifying Your Firearms and Training Programs

*** KNOW WHAT AND HOW TO DOCUMENT ***

ESTABLISH & DOCUMENT
TRAINING GOALS & OBJECTIVES
*** KNOW WHAT AND HOW TO DOCUMENT ***

Your Goals and Objectives must be based on Case Law (i.e Canton v. Harris, Popow v. Margate, Graham v. Connor, etc.).

Include Qualifications for Marksmanship, Training on Judgmental Decision Making for Shoot-Don’t Shoot and Realistic Conditions for Task Related Training.

Remember the “Use of Force Totality Triangle” and train for objective reasonableness using perceived circumstances, perceived subjects actions and reasonable officer’s response.
**Justifying Your Firearms and Training Programs**

*** KNOW WHAT AND HOW TO DOCUMENT ***

Some examples of valuable Lesson Plans would include…

1. Standard Qualifications on various Courses of Fire using various weapons under various conditions.
2. Judgmental Decision Making training with Low Light Target Identification, Residential Environment Conditions, Shoot-Don’t Shoot, and others…
3. Objective Reasonableness training should include role-playing based on a fleeing felon situation such as Tennessee v. Garner.
*** KNOW WHAT AND HOW TO DOCUMENT ***

DOCUMENT THE EXECUTION
OF YOUR LESSON PLANS
**Justifying Your Firearms and Training Programs**

*** KNOW WHAT AND HOW TO DOCUMENT ***

Think about how you are going to execute your lesson plans…

1. How much time will you need to accomplish each lesson plan task? (i.e. Preparation, Setup, Execute, Tear Down & DOCUMENT)

2. Will you need to go to the range? How much time and Ammo will you need?

3. How much can you accomplish using role-playing techniques?

4. Can you benefit from Force-on-Force techniques such as simmunion, air-soft, etc.
Justifying Your Firearms and Training Programs

*** KNOW WHAT AND HOW TO DOCUMENT ***

ALLOW FOR AND DOCUMENT ANY CHANGES TO YOUR LESSONS
Be prepared to change your lesson plans…

1. If everyone is getting “killed” in your scenarios, you need to consider a different approach!
2. You may find Task C should come before Task B.
3. You may need to change your lesson plan due to Range restrictions (i.e. paper targets - not metal).
4. Consider executing a lesson plan in in-climate weather for realistic environment training.
5. Key personnel may not be available until later in the day or week to accomplish your goal.
Justifying Your Firearms and Training Programs

*** KNOW WHAT AND HOW TO DOCUMENT ***

DOCUMENT ALL TRAINING ACTIVITIES
Include time in your lesson plans for documentation…

1. If you execute a well planned training program and don’t document it - you may as well have not trained at all!!!

2. Document in Details - not in General Statements.

3. Don’t forget to document “Failures”, then “Retrain” and document both!

4. Document both what you planned to train and what you actually trained.

5. Keep your documentation in a form and place that’s readily available - you will eventually need it!
Justifying Your Firearms and Training Programs

*** KNOW WHAT AND HOW TO DOCUMENT ***

DOCUMENT YOUR FIREARMS INVENTORY
**Justifying Your Firearms and Training Programs**

*** KNOW WHAT AND HOW TO DOCUMENT ***

Document where your firearms **ARE** and **WHERE THEY HAVE BEEN**...

1. While not part of your lesson plan, tracking where your firearms are and where they have been will protect you and your department from potential liability.

2. Include weapons inspections as a part of all appropriate lesson plans and document the results.

3. Document whether Personal or Department owned.

4. Document “Deleted” Firearms - What happened to them and when!
Justifying Your Firearms and Training Programs

*** KNOW WHAT AND HOW TO DOCUMENT ***

DOCUMENT YOUR EQUIPMENT INVENTORY
*** KNOW WHAT AND HOW TO DOCUMENT ***

The same goes for your non-firearms Equipment Inventory…

1. Document where each item is currently located.
2. Document where each item has been since it has been under your responsibility. Who had it, when, for how long and what condition it was in when issued and when received.
3. Document what condition each item is in.
4. Document the Category or Type of each item.
Justifying Your Firearms and Training Programs

*** KNOW WHAT AND HOW TO DOCUMENT ***

DOCUMENT ALL MAINTENANCE
*** KNOW WHAT AND HOW TO DOCUMENT ***

Document every maintenance action on both your weapons and your non-weapons inventory...

1. Document the Reported Problem and date.
2. Document date received for maintenance.
3. Document what maintenance was performed, by whom, date, cost and or hours involved to fix.
4. Document rounds through the weapon.
5. Document any Inspection Results/Conditions even if maintenance is not required.
DOCUMENTING YOUR TRAINING
IF YOU DON’T DOCUMENT
YOU DIDN’T DO IT!
BECAUSE...

DOCUMENTATION

IS YOUR

ONLY PROOF!
Justifying Your Firearms and Training Programs

*** HOW CAN YOU DOCUMENT? ***

There are basically only 4 ways to document...

1. **Paper** – Convenient, inexpensive, no learning curve.
2. **Generic Automation** - Less convenient, some expense, some learning required.
3. **Dedicated Automation** - More convenient, could be expensive, less learning required than generic software.
4. **In Your Head** - Very convenient, no learning curve **BUT it could be very expensive.** Also, not recommended for a firearms training program for obvious reasons!
In Summary

You need to understand some basic Case Law so you can properly develop your firearms training program in order to cover all potential liability.

You need to understand the importance of documenting your training program to protect your officers and the Department from potential liability.

You need to work with the Chief or the department Supervisor by supplying them with accurate budget numbers as well as specific Case Law to help them justify the training budget so that all required training can be accomplished.
In Summary

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In Summary

...AND WE NEED TO THINK ABOUT ESTABLISHING UNIVERSAL CORE QUALIFICATION ELEMENTS TO INSURE THAT ALL FIREARMS TRAINING CAN BEGIN TO USE THOSE STANDARDS FOR THE BASIS FOR JUSTIFYING THE FUNDING AND RESOURCES FOR THEIR LOCAL FIREARMS TRAINING PROGRAM.
In Summary

We hope you have enjoyed this presentation and that we have made you think a little more about what you do, why you do it and how you can do it better, faster and more accurately with regard to your firearms training program.

You also need to be able to leave your ego at the door in order to take advantage of the great expertise available to you by networking with your peers.
QUESTIONS?