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**CAPTAIN M. M. WASSON  
LOS ANGELES POLICE DEPARTMENT**

**INDEPENDENT STUDY PROJECT  
TECHNICAL REPORT**

**"WHAT ACTIONS WILL LAW ENFORCEMENT AGENCIES  
TAKE TO DEAL WITH PEACE OFFICERS IDENTIFIED  
AS SIGNIFICANT CIVIL LIABILITES?"**

**State of California  
Commission on Peace Officer Standards and Training  
Command College 18**

**July 1994**

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**Defining the future differs from analyzing the past because the future has not yet happened. In this project, useful alternatives have been formulated systematically so that the planner can respond to a range of possible future environments.**

**Managing the future means influencing the future--creating it, constraining it, adapting to it. A futures study points the way.**

**The views and conclusions expressed in the Command College project are those of the author and are not necessarily those of the Commission on Peace Officer Standards and Training (POST).**

**Commission on Peace Officer Standards and Training**  
**Command College Class 18**  
**Captain M. M. Wasson**  
**Los Angeles Police Department**

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## What Actions Will Law Enforcement Agencies Take To Deal With Peace Officers Identified As Significant Civil Liabilities?

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### ABSTRACT

Civil liability exposure and reduction is a major law enforcement issue. Interviews, questionnaires and group dynamics researched the current status of the problem and its future in California law enforcement. Analysis of 132 questionnaires from California sheriffs and chiefs projected knowledge ranging from almost total ignorance and an "it can't happen here" philosophy to advanced thinking and active approaches leading into the future. Forecasts for the future were predominantly gloomy. Six plaintiff attorney questionnaires were analyzed. Future scenarios forecast law enforcement liability, effects, and alternatives within California. A model strategic plan outlined efforts for reduction of liability and exposure and for overcoming resistance to change. The strategy centered on training and the identification, retraining, remediation, and/or removal of liability-prone officers. Other alternatives were discussed. Included is information on specific subjects for future research and a discussion of the consequences to law enforcement agencies, managers and officers of inaction.

**CAPTAIN M. M. WASSON  
LOS ANGELES POLICE DEPARTMENT**

**INDEPENDENT STUDY PROJECT  
JOURNAL ARTICLE**

**"WHAT ACTIONS WILL LAW ENFORCEMENT AGENCIES  
TAKE TO DEAL WITH PEACE OFFICERS IDENTIFIED  
AS SIGNIFICANT CIVIL LIABILITES?"**

**RESULTS OF A CALIFORNIA-WIDE QUESTIONNARIE**

**State of California  
Commission on Peace Officer Standards and Training  
Command College 18**

**July 1994**

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**Commission on Peace Officer Standards and Training  
Command College Class 18  
Captain M. M. Wasson, Los Angeles Police Department**

**"What Actions Will Law Enforcement Agencies  
Take To Deal With Peace Officers Identified As Significant Civil Liabilities?"  
Results of a California-wide Questionnaire**

**OVERVIEW**

While conducting research and interviewing practitioners in the field of law enforcement civil liability, the problem of how to handle exposure and liability questions for officers who have been identified as significant civil liabilities surfaced as a major issue facing law enforcement today and in the future. Using further interviews, questionnaires and group dynamics, extensive research was conducted into the current status of the problem and its future in California law enforcement.

The most interesting aspects of this research were the interpretation and analysis of 132 questionnaires returned from those sent to every sheriff and chief of police in California and of six questionnaires returned from plaintiff attorneys. Sheriff and chief questionnaires projected a knowledge of the problem ranging from almost total ignorance and an "it can't happen here" philosophy to advanced thinking and active approaches leading into the future. Unfortunately, even those with strong efforts to counteract liability frequently forecast a predominantly gloomy future as to events, trends, and changes to trends. These included pessimistic fiscal scenes, confused and befuddled legislative efforts, adverse courtroom decisions, and a lack of support for law enforcement efforts.

Questionnaires returned by plaintiff attorneys were "eye openers" and should be required reading for all California peace officers<sup>1</sup>. The questionnaires were intentionally directed toward those attorneys who were known, and sometimes vocal, critics of law enforcement. These persons are passionate in their beliefs that there are many peace officers who are rotten, no good scoundrels out to make life miserable for citizens who have the misfortune of being confronted by those officers.



## **BACKGROUND**

They may be called "bad," "corrupt," "heavy handed," or "out of control," but when they are also called "cops," neither the citizens nor the governments which represent the citizens can afford a problem peace officer. Law enforcement supervision and management up through the rank of chief of police or sheriff have found that they, too, literally and practically cannot afford problem peace officers. Fellow officers also fall victim to the negative fallout left by a problem officer. Fortunately, these problem officers are few in number. The effects of improper or negligent peace officer actions, which can be on or off duty and which can be extremely devastating, fall into several categories:

- \* Adverse relations with the communities served.
- \* Lack of credibility within the Criminal Justice System.
- \* Negative stories by the news media.
- \* Increased challenges in civil courts with a significant monetary loss due to attorney fees, settlements, and adverse judgments.
- \* Low morale within law enforcement agencies and significant officer turnover.
- \* Government bankruptcy, both in a fiscal sense and in public confidence.

None of these situations exists independent of the others. Failure to adequately deal with the problem peace officer today and in the future will seriously and adversely affect the ability of law enforcement to complete its mission.

## **A HISTORICAL PROSPECTIVE**

For years, court decisions have attempted to limit or restrict law enforcement actions with varying degrees of success. These court decisions have primarily been in the areas of coerced confessions, illegal search and seizure, and exclusion of evidence. Even before these decisions, legislation and court decisions governing liability areas were proceeding. Knowledge of certain

civil rights legislation and court decisions allows one to better understand past and present civil liability laws and their effects on the future. The post-Civil War reconstruction era Federal Civil Rights Act of 1871<sup>2</sup> made it illegal for any person to deprive another "... of any rights, privileges, or immunities secured by the Constitution and laws,..."<sup>3</sup> and that the person depriving another "... shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress."<sup>4</sup> This legislation provides the basis for lawsuits based on an alleged violation of a person's civil rights.

The United States Congress amended the Federal Civil Rights Act of 1871 by the Civil Rights Attorney's Fee Awards Act of 1976<sup>5</sup> to allow for the award of attorney's fees for the prevailing party. In 1978, the United States Supreme Court in *Monell v. Dept. of Social Services of City of New York*<sup>6</sup> held that the Federal Civil Rights Act was applicable to municipalities as well as to persons. Plaintiffs' attorneys did not let these changes go unnoticed. To attorneys, the changes meant that if plaintiffs prevail in any portion of the case, attorney fees could also be awarded. This made lawsuits against government and governmental employees profitable. The "deep pockets" of municipalities would guarantee payment. To law enforcement officers and management, the changes meant they were soon to confront attorneys in a new specialty of the law, police abuse cases.

### **DEFINING THE PROBLEM**

It has been said that to see the future, one must look to the past. One must also look to the present to determine the current status and to determine what the experts of today forecast as possibilities and probabilities for the future.

### **Media and Public Relations**

Litigation and advertisements for and against litigation can be found everywhere.<sup>7</sup> Many articles in newspapers and news magazines refer to law enforcement losses in individual civil cases, the size of those losses, and the actions taken by officers which caused the losses or

settlements in the cases.<sup>8</sup> Officers who are significant civil liabilities, the identification of those officers, and what to do with those officers are subjects at the heart of many discussions, but these subjects are seldom referred to directly. There are, however, a few exceptions. As reported in the *Los Angeles Times* in 1991,<sup>9</sup> the Los Angeles City Attorney's Office reorganized its Civil Liability Division specifically to defend against major lawsuits more effectively. Also in the *Los Angeles Times* in late 1992,<sup>10</sup> an internal feud surfaced within the Los Angeles Sheriff's Department between a Lakewood Station captain and Sheriff Sherman Block. The question was whether deputies were being fired because of their adverse civil liability to the Department. The captain testified at a deputy's hearing that such a change in Department policy had occurred. Block denied it.

### Seminars

One very bountiful source of information is the professional seminar, presented either by an organization of plaintiffs' attorneys (i.e., Police Misconduct Lawyers Referral Service) or by an attorney specializing in defending peace officers or working with agencies to prevent lawsuits. The seminars review current cases while presenting successful and new trial tactics and approaches for suit or defense.<sup>11</sup>

### Literature Search

Virtually all of the literature on the issue is found in statutes, legal cases, texts on those subjects, and specialty publications such as "Risk & Insurance"<sup>12</sup> and the "Law Enforcement Legal Defense Manual."<sup>13</sup> Failure to ascertain that a problem exists, failure to take action, negligent retention, retraining, and assignment are the five subjects most covered. In *Moon v. Winfield*,<sup>14</sup> the court found that if a police superintendent is negligent in retaining an officer who had numerous citizen complaints against him, that command officer may be held liable for damages if the officer subsequently assaults a citizen. In the same case, the court held that if a chief knew, or should have known, of the excessive force, malicious conduct or questionable mental stability of an

officer, that chief may be held liable for future injuries if the chief fails to suspend the officer or otherwise prevent public contact while the chief is attempting to terminate the officer. In *Grandstaff v. City of Borger*,<sup>15</sup> after the police chief knew that his officers repeatedly engaged in widespread, reckless acts with deadly force while pursuing suspects, the chief took no action to correct the conduct. The chief and his department became liable.

Two recent blue ribbon committee reports, one on the Los Angeles Police Department<sup>16</sup> and the other on the Los Angeles County Sheriff's Department<sup>17</sup>, documented patterns of behavior by peace officers which the authors believed have exposed the officers, agency command staff, the agencies, and civil governments to unwarranted civil liability. From the Christopher Report, the following finding concentrates on the present and future issue:

"The failure to control (a significant number of officers ... who repetitively use excessive force ... and persistently ignore the written guidelines of the Department regarding force<sup>18</sup>) is a management issue that is at the heart of the problem. ... The Department not only failed to deal with the problem group of officers but it often rewarded them with positive evaluations and promotions.<sup>19</sup>

In the Kolts Report, one comment and two recommendations were found which directly deal with the issue:

"The threat of litigation can be a powerful vehicle for correcting misconduct. But it can also be a powerful disincentive for the LASD to investigate and police itself."<sup>20</sup>

"... Where a pattern of repeated use of unnecessary force is found and a deputy does not benefit from supervisor or professional mental health counseling, the deputy should be discharged."<sup>21</sup>

"... We recommend the implementation of monitoring programs to make sure that captains are using force tracking systems and other sources of information to reduce excessive force, impose discipline, reward good behavior, take care of problem deputies, and in general manage their stations in a manner consistent with community-based policing standards and in a way to reduce dissatisfaction in the community."<sup>22</sup>

### **Expert Opinion**

Experts within the field were personally interviewed<sup>23</sup> to gain a broad picture of the civil liability issue within law enforcement. Those sought out for interviews were legal authorities employed by law enforcement agencies to reduce liability, provide training, advise command staff, and/or handle discovery, or they were legal counsel for local governments charged with defending

agencies and officers. The interviews were very unstructured to allow each expert to discuss the areas of greatest personal interest. Although each had his own opinions, there were multiple common threads throughout the interviews.

### The Problem

With officers and command staff involved in numerous heart-wrenching civil suits, it is apparent that two key issues are not being properly addressed in California law enforcement. The first issue is how can and should liability prone peace officers be identified. The second issue is what to do with peace officers who have become a liability to themselves and everyone around them to protect the officer, the agency, and the community. These issues, and the greater subject of civil liability, have been and are the subjects of seminars, legal reference manuals, reports, journals, conferences, and debate. Two have already been discussed. Those are the special reports on the Los Angeles Police Department<sup>24</sup> and the Los Angeles County Sheriff's Department.<sup>25</sup> While some of the officers were totally innocent of any wrong doing, in many of the cases in which the officers acted improperly, the reports found that little or no action was taken to reduce the liability. The Christopher Commission indicated that:

"... the Commission staff reviewed the files of all 83 cases of alleged excessive or improper force ... that resulted in a settlement or judgment of more than \$15,000. ... The LAPD's investigation ... was flawed in many respects, and discipline against the officers involved was frequently light or nonexistent. **Moreover, the LAPD does not have adequate procedures in place to review or learn from the results of this litigation (emphasis added).**"<sup>26</sup>

The Los Angeles County Sheriff's Committee Special Counsel Kolts and his staff, too, indicated that:

"(The Sheriff's) Department, like the LAPD, has too many officers who have resorted to unnecessary and excessive force. The Department has not done an adequate job disciplining them. **It has not dealt adequately with those who supervise them (emphasis added).**"<sup>27</sup>

"(Sixty-two) deputies who, between January 1986, and April 1992, have been investigated at least five times for shootings or complaints of Force/Harassment allegations ... (were) responsible for nearly 500 separate Force/Harassment investigations. One deputy alone accounted for 27 investigations; another was

responsible for 25. Seventeen of the deputies were responsible for 22 lawsuits resulting in nearly \$3.2 million in jury awards or settlements paid out by the County."<sup>28</sup>

From the reviews and interviews, the following question evolved and was used to focus research on law enforcement civil liability. As such, the question became the definition of the problem itself.

**In the future, what actions will law enforcement agencies take to deal with peace officers identified as significant civil liabilities?**

Because of the breadth of this question, additional questions to help further define the problem were identified using two methods. The original experts interviewed were queried as to what they saw were important sub areas. Then, using a futures wheel, four officers<sup>29</sup> discussed important sub areas. Those sub areas which developed between the two methods as primary concerns were chosen. These questions were:

How will officers be identified as significant civil liabilities?

What will be the legal limitations on the actions which can be taken toward the identified officers?

How will agencies adopt alternatives to reduce the civil liabilities caused by the officers?

### **CURRENT AND FUTURE STATUS**

To identify both current trends and activity levels of the problem, and to evaluate future trends and events, three traditional methods of futures research were used: interviews, questionnaires and group dynamics. All three involved expert judgment.

The same experts interviewed to gain a liability picture provided information to formulate the questionnaires and to facilitate group dynamics. Two separate questionnaires were developed to target two very dissimilar interest groups:

\* All California chiefs of police and sheriffs.

- \* California attorneys whose specialty was representing plaintiffs in police abuse cases.

Although it would have been very entertaining, no interviews were sought from the plaintiff's side of the bar for two reasons. First, a video tape of a plaintiff attorney seminar was available for review. Second, plaintiff attorneys are very suspect of law enforcement. Instead, the questionnaire approach was used.

The questionnaires were formatted for easy, short answer completion. The front of the questionnaire queried the current status of the problem using the three defining questions. The back of the questionnaire sought current trends and forecasts of future events. Because of the way many questionnaires were answered, forecasts of changes to current trends were also obtained. The questionnaires mailed and returned completed were as follows:

<u>Addressee</u>	<u>Mailed</u>	<u>Returned</u>
* Chiefs of Police and Sheriffs	430	132
* Attorneys for plaintiffs	8	6

The completed law enforcement questionnaires represented every size and type of agency. They revealed knowledge, activities and attitudes ranging from total ignorance and a lack of concern to extreme sophistication, concern and activity levels. The responses to some questionnaires were extremely detailed, going on for several pages. One contained only two words. These questionnaires were analyzed and synthesized by the author into sixteen current trends, nineteen forecast trend changes, and fifty-three forecast events. The trends, trend changes and events were then submitted for analysis in the group dynamics sessions.

Two discussion groups sessions were planned with significantly different participants to evaluate and refine the results obtained from the law enforcement questionnaires. In each, a Nominal Group Technique (NGT) was used. The first group<sup>30</sup> was drawn from Los Angeles City and County government and law enforcement and from community members and activists within

South Central Los Angeles. Due in part to very divergent opinions, this group was only successful in concentrating on discussing and forecasting future events.

The second group<sup>31</sup> was drawn from business, legal and social acquaintances with no ties or contacts with the law enforcement civil liability question. This group was considerably more focused. As a result, it was able to deal extensively with culling a large number of potential trends into manageable lists (See below) and with forecasting events and changes to trends.

### **Events Derived from Chief/Sheriff Questionnaires**

- 1 Court decision finds both a city/county and chief/sheriff liable for failure to identify and monitor civil liability prone peace officers
- 2 A court awards an extremely large civil judgment against a city or county which is beyond its ability to pay, forcing it into bankruptcy
- 3 Major budget difficulties cause virtually all agencies to limit legal counsel, claims investigation, administrative investigations, and training
- 4 Greater and fixed penalties for frivolous lawsuits
- 5 Court decision limits local agencies as to actions which can be taken towards identified liability prone officers, adding officer rights and adversely affecting agency ability to deal with peace officer civil liability
- 6 Court decision increases personal civil liability of peace officers versus "deep pocket" agency or municipality liability
- 7 Plaintiff's attorney will use agency's Early Warning System (EWS) to prove agency knew of liability prone officers and did nothing
- 8 Legislation reduces civil liability exposure of law enforcement agencies
- 9 Law enforcement candidate selection screening is hampered by legislation imposing further restrictions
- 10 Governments decide to reduce law enforcement services and actions in areas of high civil liability exposure (i.e., vehicle pursuits almost totally eliminated)
- 11 State mandates retraining of peace officers identified as liability prone in the areas of officer involved traffic collisions, use of force (UOF), and pursuits
- 12 In 1999, large numbers of crack, nutrient starved and alcohol syndrome babies become psychologically unbalanced teenagers; social/civil unrest between haves and have nots occurs; society condones excessive force
- 13 Legislation provides for public disclosure of peace officers' personnel and discipline records
- 14 A significant, non-lethal weapon is developed and implemented to give peace officers more alternatives in UOF situations where lethal force is currently employed

### **Changes to Trends Derived from Chief/Sheriff Questionnaires**



- 1 Continued budgetary constraints force law enforcement agencies to significantly reduce proactive programs aimed at reduction of liability exposure and mandated citizen complaint investigation and liability training
- 2 Civil liability trend will swing back to the more conservative side within next 10 years
- 3 Punitive damage awards against law enforcement administrators become a common practice of juries and courts
- 4 There is a significant increase in competent (versus political) federal and state prosecutions of peace officers for violations of suspects' rights
- 5 Increasingly and in significant areas, agencies begin to implement policies which prohibit their officers from becoming involved in enforcement actions, thus reducing exposure to liability
- 6 Once law enforcement early warning systems (EWS) are in place, plaintiff's attorneys will use EWS against law enforcement agencies and officers in court
- 7 Excessive amounts of legislation on civil liability process, awards, caps, countersuits, etc., will be passed, further confusing the issues
- 8 Chiefs and sheriffs will more closely scrutinize outside employment of peace officers which expose the officers and/or agencies to increased civil liability
- 9 Peace officer associations (POA's), city attorneys and county counsels are going to become much more aggressive in their defense of peace officers and law enforcement agencies when warranted
- 10 Law enforcement agencies are likely to have less flexibility in their handling of disciplinary matters
- 11 There will be increased legal action by peace officer associations (POA's) challenging law enforcement agencies' actions taken against liability prone officers
- 12 There is a significant increase in civilian oversight of law enforcement operations, personnel complaint handling, and peace officer discipline
- 13 Economic and other pressures will cause significant regionalization of law enforcement agencies
- 14 Peace officers will return to and more frequently be involved in reactive call for service duties than in crime prevention, school resource programs, etc., because of reduced resources

A third group dynamics evaluation involved an analysis by nine law enforcement middle managers attending Command College Class 18 of the master trends drawn from the chief and sheriff questionnaires. The resultant sixteen trends (See below) were then analyzed for past and future strength or weakness (what it has been to what it is going to be).

### **Trends Derived from Chief/Sheriff Questionnaires**

- 1 Societal expectations of law enforcement competency and accountability affect citizen personnel complaint levels and exert pressure for civilian review boards
- 2 Court decisions which place additional responsibilities and liability on law enforcement agencies (including a shift to criminal courts)
- 3 Increases in peace officer rights and court decisions which increase the level of difficulty to discipline or discharge a peace officer; disciplinary discharges and penalties overturned by courts

- 4 Law enforcement officers, feeling the negative effect of public opinion, are fearful of taking proactive or aggressive police action
- 5 Peace officers must not just take the correct actions; they must be able to prove they did
- 6 Liability levels and erosion of defenses based on exposure due to high risk police tasks (e.g., K9, pursuits, shootings, SWAT, UOF)
- 7 Identification of liability prone officers through various means (EWS, complaints, pursuits, audits, reviews, observation, psychology, etc.)
- 8 Legislation to modify civil litigation to restrict lawsuits and cap awards
- 9 Number and level of awards and settlements in law enforcement liability claims and lawsuits
- 10 Law enforcement agencies involved in creative (e.g., improvement contracts) and proactive (e.g., EWS) methods to reduce liability exposure
- 11 Efforts to retrain/modify/eliminate identified liability prone officers
- 12 Law enforcement resources available for proactive service and liability reductions in light of budget reductions
- 13 Peace officers in the non-traditional role (i.e., C.O.P.) as problem solver (versus the role as enforcer)
- 14 Sexual harassment in the law enforcement working environment as a source of civil liability
- 15 Public demand for accountability in all areas of law enforcement
- 16 Training for peace officers in critical areas of civil liability

Due to the small number of attorney responses and the nature of the answers, an extensive analysis was not possible. Some of these questionnaire answers (See sample comments below) were quite extreme and definitely focused toward predictable directions. The extreme nature of many of the answers does not mean they are without value. Many of the ideas were simply very strong statements of ideas similar to those which chiefs and sheriffs espoused. The real difference showed up in the plaintiff attorneys' lack of regard for law enforcement agencies and peace officers themselves. There is a strong belief among plaintiff attorneys that no agency or officer will affirmatively do something about a problem officer, but instead the agency or fellow officers will cover up, lie or ignore.

#### **Sample Comments Derived from Plaintiff Attorney Questionnaires**

- 1 Citizen complaints against peace officers for whatever reason should be taken more seriously by command level supervisors.

- 2 By involving citizens in internal affairs investigations, agencies could perhaps deflect civil suits (or in the alternative develop data on plaintiffs).
- 3 It is rare that formal action is taken for substantive misconduct, i.e., brutality and dishonesty.
- 4 The pressures come from civilian municipal management who, in my experience, do not want to press misconduct issues too firmly because they are accused of calling the miscreants liars and destroying morale.
- 5 Even in the wake of King, Christopher and Kolts, police agencies have not taken genuine efforts to address civil liability expenditures.
- 6 Restrictions of agency actions against unfit employees are an excuse.
- 7 In response to the public exposure of police crime resulting from the King video, law enforcement agencies have tightened their efforts to further close down the availability of any information about police practices...
- 8 Agencies make little or no effort to identify violent officers although there are numerous methods for doing so.
- 9 There is no effort to reduce liabilities except by vigorous, and sometimes dishonest, opposition to lawsuits.
- 10 Police violence will increase; violence against police will increase.
- 11 Police misconduct will continue unabated, and it will result in more street violence against police.

## **FINDINGS**

With literally hundreds of answers contained in the returned questionnaires, it is not possible to discuss even each general category. Representative samples of the answers to three questions on the front of the questionnaires are included below<sup>32</sup>.

### **Samples of Methods Being Used to Identify Officers with Liability Problems**

All personnel complaints and lawsuits are reviewed by chief	Peer observations
Computerized EWS that identifies "threshold" officers	Personnel complaints
Discussion among supervisors and staff on the observed behavior and whether it is an isolated incident or part of a trend	Trend and behavior analysis, i.e., tardiness, excessive absenteeism, minor procedural infractions, traffic collisions, "unresolved" personnel complaints
Information from the community	Resist and Battery on PO reports
Key agency personnel are well aware of high liability areas and keep an eye on them	Review of personnel complaints for patterns of conduct
Lawsuit monitoring	Supervisors accountable
Lawsuits filed	Tort claims and lawsuits are used by civil liabilities unit to identify liability prone officers
Misuse of equipment	Pursuit and traffic collision reports

Patterns of behavior reported by citizens

UOF reports

Peer comments and feedback

Worker's compensation claims

### Sample of Ways Agencies Deal with Legal Limitations

Action taken is based on particular incident being investigated

Advantage is taken to deal with an identified liability prone peace officer when the situation presents itself

Agency policy specifically covers areas which expose peace officers to liability and officers are trained in the policy

Aggressive, swift action on probationary peace officers

Clearly stated standards of behavior

Concerted effort to interact with other law enforcement agencies and not become an island unto oneself

Constant research by training staff

Criminal law violations are prosecuted

Establishing solid policy

Follow Peace Officers' Bill of Rights (AB301)

Increased documentation

Increased supervision

Job related behavior must be concentrated on

Legal advice of attorney is followed

Merit pay is limited for liability prone peace officers

Offering of help and assistance to peace officer based on observed behavior

Peace officers found to be significant liabilities under negligent retention would be discharged

Performance contracts are established for liability prone peace officers

Performance improvement plans

Performance improvement programs

Probationary peace officers are closely monitored during training; those with uncorrected liability prone problems are discharged

Reassignment away from liability area

Remedial training

Revocation of peace officer power

Use advice of legal counsel

Use of progressive sanctions

Warnings / counselling

### **Proactive Alternatives Used to Reduce Liabilities Caused by Identified Officers**

Action is swift by first line supervision

Administrative transfer to a position of diminished liability

Annual internal affairs update class for all peace officers includes citizen complaint trends and a legal case review

Block training on current hot issues (i.e., sexual harassment)

Civil liability rollout team includes legal/internal affairs investigator and a civil liability attorney

Close supervision of officers identified as liability prone

Constant review of training and training methods

Ensure policies and procedures are clear

Establish job expectations and hold officers to those expectations

Fitness for duty evaluations (medical and/or psychological)

Heavy emphasis on training/retraining in areas of high potential liability (UOF, driving, pursuits, civil liabilities)

Internal affairs publishes a training bulletin quarterly which focuses on liability reduction techniques

Officers identified as liability prone are placed on an "Action Plan" remedial training tailored to the officer's needs

Performance evaluations must address the future, building contractual agreements for peace officers to improve named deficiencies with specific strategies

Positive reinforcements for behaviors that are laudable

Psychological evaluation in screening process attempts to find type of candidate for which agency is looking, rather than simply eliminating candidates

Reassignment and transfer

Supervision of identified peace officers is close

Supervisors and managers are alerted to the most current issues

Tracking of events

### **Current Trends**

Overall, current trends derived from all sources indicate that:

- \* Legislation modifying civil liability litigation and awards is increasing at the same time the number of settlements and amounts are increasing.

- \* Law enforcement agencies are increasingly taking measures to identify liability prone officers and reduce exposure.
- \* Legislation, court decisions, and exposure are increasingly placing responsibility and liability on agencies and officers.
- \* Legislation and court decisions are adding to officer rights.
- \* Officers and agencies are fearful and are cutting back in aggressive enforcement areas.
- \* Sexual harassment is a significant liability exposure in law enforcement.
- \* Officers and agencies are not trusted to the degree they formerly were.
- \* Citizen expectations of competency and accountability are causing complaints and pressure for citizen monitoring of law enforcement activities.
- \* Officers are increasingly taking on problem solver roles.

Samples of areas of current trends taken from returned chief and sheriff questionnaires are included below:

Area	Trend	Direction
Accountability	Agencies held accountable for peace officers' conduct	Increasing
Accountability	Agencies holding peace officers accountable for actions	Increasing
Accountability	As dinosaurs are weeded out or retire, level of proactive mentoring and individual accountability pushed by a better executive leadership	Increasing
Accountability	Expectation for agencies themselves to identify officers who are civil liabilities	Increasing
Accountability	Expectations on law enforcement in the areas of performance and conduct, while experiencing increased demands for "protected individual rights" of peace officers	Increasing
Accountability	Growth within small agencies and difficulty to achieve accountability	Increasing
Accountability	Law enforcement accountability in civil liability areas	Increasing
Accountability	Added liability and close oversight for law enforcement agencies which rationalize why they failed to police themselves	Increasing
Accountability	Law enforcement agency responsibility for their peace officers and actions (recruitment, selection, training, supervision, discipline)	Increasing
Accountability	Law enforcement supervisors held more accountable for the actions of the peace officers they supervise (à la Rodney King)	Increasing
Accountability	Liability attributed to law enforcement supervisors for failure to recognize a civil liability issue	Increasing

Accountability	Peace officers held accountable for their deeds or misdeeds	Increasing
Accountability	Required system of standards and compliance for law enforcement agencies	Increasing
Accountability	Setting of example in civil liability-prone areas by supervisors and managers	Increasing
Accountability	Supervisory sensitivity and action required by the stress of an ever tightening budget and fewer resources to do the same jobs	Increasing
Accountability	Use of alternatives to the standbys of documentation and discipline	Increasing
Citizen Review	Citizen review of police conduct	Increasing
Citizen Review	Civilian review boards established (5 years and beyond)	Increasing
Citizen Review	Community demands to be more involved in the review process on UOF issues, particularly where C.O.P. has been implemented	Increasing
Citizen Review	Emphasis for civilian review boards for law enforcement	Increasing
Citizen Review	Interaction by the general public in training and selection	Increasing
Citizen Review	Public scrutiny of UOF policies and practices, including alternative methods	Increasing
Citizen Review	Review boards and similar groups exert increased control over agencies	Increasing
Citizen Review	Society's demands for accountability	Increasing
Citizen Review	Tendency of societal expectations of law enforcement competency and accountability to become pressure for civilian review boards	Increasing
EWS	Implementation by law enforcement agencies of some sort of EWS to protect against civil liability exposure	Increasing
EWS	POA inclination to fight implementation and use of law enforcement EWS	Increasing
EWS	POA resistance with potential litigation on use of EWS or identification of liability prone peace officers together with individual targeting	Increasing
EWS	Regional, state-wide or national tracking of citizen complaints	Increasing
EWS	Reliance on computerized incident tracking systems (EWS) to identify potential problem peace officers	Increasing
EWS	Requirement for remedial training of peace officers based on arbitrary number of complaints despite questions on effectiveness	Increasing
EWS	Use of computer based EWS and training tracking systems	Increasing
EWS	Use of EWS by law enforcement agencies	Increasing
EWS	Use of EWS or pre-incident identification of liability prone peace officers	Increasing
Identification	Ability of a law enforcement agency to take the proactive measures necessary to reduce liability	Increasing
Identification	Agency emphasis on extreme steps in an attempt to identify and eliminate liability prone peace officers due to negligent hiring/retention lawsuits	Increasing
Identification	Agency use of proactive identification and dealing with liability prone peace officers, particularly in the areas of excessive force and fitness for duty	Increasing
Identification	Behavioral science skills used to identify and assist liability prone peace officers	Increasing

Identification	Civil liability responsibility of agencies, managers and supervisors to identify and correct deficiencies	Increasing
Identification	Court decision's influence on dictating methods of identifying and remedying liability prone peace officers	Increasing
Identification	Court decisions that an agency knew or should have known of an officer's behavior/performance	Increasing
Identification	Early identification of peace officers with tendencies toward unacceptable behavior	Increasing
Identification	Efforts to identify liability prone peace officers	Increasing
Identification	Expectations that agencies will identify peace officers involved in liability prone incidents and reinforce training in those areas	Increasing
Identification	External influences (personnel agencies, special interest groups, city attorneys, plaintiff attorneys, increased frequency of lawsuits) on identification of liability prone peace officers	Increasing
Identification	Identification of liability prone peace officers by agencies	Increasing
Identification	Identification of liability prone peace officers through monitoring activities and audits	Increasing
Identification	Level of action by law enforcement agencies to identify and target liability prone peace officers	Increasing
Identification	Monitoring the actions of peace officers by agencies to identify possible liability	Status quo
Identification	Psychological testing given periodically to identify potentially liability prone peace officers	Increasing
Identification	Punitive damages in civil lawsuits against agencies which don't identify and remediate liability prone peace officers, as fallout of Christopher Commission	Increasing
Identification	Supervisors' need to be better versed in identification of high liability situations	Increasing
Standards-Citizen	Agency failure to meet community standards translates into more agencies legally limited	Increasing
Standards-Citizen	Citizen belief that peace officers are too highly paid yet want more peace officers	Increasing
Standards-Citizen	Citizen expectation for the elimination of police brutality	Increasing
Standards-Citizen	Citizen faith in law enforcement	Decreasing
Standards-Citizen	Citizen scrutiny of law enforcement and willingness on their part to report violations of law and policy	Increasing
Standards-Citizen	Close scrutiny of law enforcement conduct (over next 5 years)	Increasing
Standards-Citizen	Communities not allowing agencies to continue to employ liability prone peace officers	Increasing
Standards-Citizen	Communities not allowing agencies to pay for peace officers' punitive award judgments	Increasing
Standards-Citizen	Communities not tolerating large settlements for seemingly frivolous cases	Increasing
Standards-Citizen	Communities want problem solving, not police occupation	Increasing
Standards-Citizen	Communities' intolerance of abusive peace officers	Increasing



Standards-Citizen	Community belief that agencies can police themselves and are open	Decreasing
Standards-Citizen	Community concern and awareness; agencies which can gauge these have an advantage if they respond appropriately	Increasing
Standards-Citizen	Community expectations of agencies to get rid of peace officers who should not be in police work	Increasing
Standards-Citizen	Community influence as a factor directly limiting peace officer discretion	Increasing
Standards-Citizen	Community input on policing methods, procedures and practices	Increasing
Standards-Citizen	Community service expectations far exceeding law enforcement's financial ability to deliver	Increasing
Standards-Citizen	Community's desire for crime control but doesn't like to be policed itself	Increasing
Standards-Citizen	Demand for law enforcement accountability (5 years and beyond)	Increasing
Standards-Citizen	Expectation by society for law enforcement to do more (i.e., with violent crime) with less (i.e., reduced budgets and resources) while being more sensitive while doing it	Increasing
Standards-Citizen	Expectation that law enforcement peace officers are not allowed to make mistakes and must pay for any made in the form of civil liability awards	Increasing
Standards-Citizen	Expectations of residents faced with increased civil lawsuits to cut the governmental expenses of those lawsuits	Increasing
Standards-Citizen	Hostility in society which relates to and reflects how the law and law enforcement are perceived and treated	Increasing
Standards-Citizen	In small agencies, simply living in the community as the primary pressure to act properly	Status quo
Standards-Citizen	Law enforcement held to a higher level of expectation by society	Increasing
Standards-Citizen	Pressure (multiple sources) to monitor peace officers more closely	Increasing
Standards-Citizen	Public demand for accountability in law enforcement	Increasing
Standards-Citizen	Scrutiny of law enforcement by community	Increasing
Standards-Citizen	Social changes which require peace officers to be more aware and responsive to their communities	Increasing
Standards-Citizen	Societal demands on agencies, especially in the area of ethics	Increasing
Standards-Citizen	Society becoming less trusting of law enforcement	Increasing
Standards-Citizen	Society's belief that public safety is a number one priority and that society must be more tolerant of the human beings who are peace officers	Decreasing
Standards-Citizen	Society's concern in the areas of law enforcement pursuits and UOF	Increasing
Standards-Citizen	Society's demand for more protection from violent crime	Increasing
Standards-Citizen	Society's demands for ethical performance and accountability by law enforcement	Increasing
Standards-Citizen	Society's expectations of agencies while resources are shrinking	Increasing
Standards-Citizen	Society's expectations of law enforcement	Increasing

Standards-Citizen	Society's expectations of law enforcement (as against law enforcement's ability to respond)	Increasing
Standards-Citizen	Society's expectations of law enforcement officers and their conduct	Increasing
Standards-Citizen	Society's expectations with regard to law enforcement's ability to deal with liability prone peace officers does not correspond with legal statutes and case law	Status quo
Standards-Citizen	Society's level of knowledge about civil liability and accountability and expectations for law enforcement to take action to eliminate liability prone officers	Increasing
Standards-Citizen	Society's willingness to pay for its expectations of police service and crime levels	Decreasing
Standards-Citizen	The ability of society's expectations to influence a clumsy and unresponsive bureaucracy is very small	Status quo

### Forecast Changes to Current Trends

Questionnaires reflected that changes to current trends are likely to occur in the following areas. However, forecasts for the timing of the changes if and when they occur are much less definite than the forecasts of changes themselves:

- \* Economic and other pressures may cause some regionalization of law enforcement agencies, with the greatest likelihood beginning in 1997.
- \* Budget problems may force law enforcement agencies to curtail liability exposure reduction efforts starting after 1995, and they are very likely to curtail the efforts after 1998.
- \* Peace officer associations (POAs) and law enforcement attorneys may become more aggressive in their defense of officers and agencies, particularly after 1997.
- \* Law enforcement agencies may implement significant policy changes to forbid certain high liability enforcement actions.
- \* Law enforcement agencies will probably limit outside employment, particularly after 1997.
- \* Law enforcement's early warning systems (EWS), developed to identify liability prone officers, will be used within a few years by plaintiffs' attorneys in their lawsuits against law enforcement.
- \* Punitive awards against law enforcement administrators may become more common.
- \* Competent prosecutions of officers for violation of suspects' rights are likely, particularly after 1998.

- \* Law enforcement agencies in the future may have less flexibility in handling discipline, (due in part to strong legal action by POAs.
- \* Within three to four years, there may be an increase in civilian oversight of law enforcement operations and discipline.
- \* A significant amount of legislation will be forthcoming on civil liability, but it will confuse rather than settle the issue.
- \* The civil liability trend probably will begin to swing back starting after 1998.

Samples of areas of current trends taken from returned chief and sheriff questionnaires are included below:

Area	Projected Changes to Current Trends	Ten Year Probability
Abuse of Courts	Attorneys pursuing frivolous civil litigation will be penalized; those losing cases will be required to pay all costs	?
Accountability	Overall poor attitude and response by managements and supervisors of many agencies causes a significant increase of excessive force complaints state-wide	70%
Citizen Review	Significant increase in civilian oversight of law enforcement operations, personnel complaint handling, and peace officer discipline	50%
EWS	Once law enforcement EWS are in place, plaintiff's attorneys will use EWS against law enforcement agencies and officers in court	100%
EWS	Significant increase in law enforcement agencies, on their own, initiating EWS to identify liability prone officers and trends	25%
Exposure	As diverse populations increasingly concentrate in urban areas, urban law enforcement will be used to mediate the cultural frictions; this action will create new and more liability areas	90%
Exposure	Massive immigration from Pacific Rim countries and Mexico changes society's expectations, forcing law enforcement to adapt to these new expectations	80%
Hiring-Retention	Improved methods of screening law enforcement candidates, and more attention paid to these methods	70%
Reduction	Chiefs and sheriffs will more closely scrutinize outside employment of peace officers which expose the officers and/or agencies to increased civil liability	50%
Reduction	Formal case review of civil liability cases involving peace officers	80%
Reduction	Law enforcement agencies will assume the responsibility for their own civil litigation including the resolution process and management of their existing funds	75%
Reduction	Law enforcement agencies will put more "front end" focus on incidents likely, based on trends and experience, to manifest themselves and become expensive litigation	75%

Reduction	POA's and city attorneys are going to become much more aggressive in their defense of peace officers and law enforcement agencies when warranted	50%
Service-Type	Increased specialization of roles of peace officers after the year 2000; patrol by security company or local agency; special enforcement by regional law enforcement agency; investigation by regional detective agency	90%
Service-Type	Peace officers will return to and be more frequently involved in reactive, call for service duties than in crime prevention, school resource programs, etc., because of reduced resources	?
Service-Type	Increase in competition with private security for police services	50%
Service-Type	Los Angeles area law enforcement agencies will shift to a more traditional policing role similar to eastern cities - more of a "blue collar" mentality, cop on the beat orientation	30%
Standards-Citizen	As the population becomes collectively older, society in general will become less tolerant of differences, and will expect and accept a less tolerant law enforcement presence	30%

### **Forecast Events**

In addition to the trend changes, the questionnaires were strong to forecast civil liability related events in the following areas:

- \* Liability for failure to identify, monitor and remediate liability prone officers.
- \* Early warning systems (EWS).
- \* Increases in liability for individual officers and reductions for agencies.
- \* Civil liability awards of such size as to cause bankruptcy.
- \* Budget difficulties to such a degree that liability exposure programs are reduced.
- \* Law enforcement agency reductions in high exposure services.
- \* Action taken against frivolous lawsuits.
- \* Increased rights for law enforcement applicants and increased rights for peace officers, both in those same areas in which law enforcement agencies are concentrating to deal with potential or actual liability prone officers.
- \* Release of peace officer personnel and discipline records.
- \* Mandated retraining and remedial action for identified liability prone officers.
- \* Increases in crime, violence and civil unrest caused by crack, nutrient-starved and alcohol syndrome youths, and the effects of these on society.

- \* Development of non-lethal weapons.

Samples of areas of forecast events taken from returned chief and sheriff questionnaires are included below:

Area	Event	Ten Year Probability
Accountability	Tiring of bad law enforcement press and civil liability judgments, governments make police chief an elected position as a mean of accountability	60%
Citizen Review	Citizens demand and get closer public scrutiny of agencies through such methods as citizen review boards	75%
Citizen Review	Creation of a state-wide oversight committee (i.e., civilian review) on law enforcement peace officer misconduct and liability	60%
Citizen Review	Legislation gives civilian review and control of law enforcement discipline, hiring, testing, and job performance review and evaluation	50%
Citizen Review	Legislation mandates implementation of law enforcement civilian review boards state-wide	50%
Citizen Review	Legislative change removing the confidential status of peace officer personnel files, thus exposing peace officers to more scrutiny by citizens or citizen review groups	70%
Citizen Review	Legislature passes law mandating implementation of civilian review boards over law enforcement agencies	45%
Discipline	City and county governments attempt to take control of law enforcement discipline process through review boards and commissions, under guise of risk management and cost control	50%
Discipline	P.O.S.T. or similar entity mandates counseling, as opposed to punitive discipline, for peace officers for early and/or non-resolved personnel complaints	70%
Discipline	Society suddenly realizes that citizen and peace officer offenders need to be dealt with quickly and fairly	5%
Discipline	Society's (the community's) influence overwhelmed by legislation contrary to their interests (e.g., POA's get to the legislators)	70%
Discipline	State-wide binding arbitration for discipline law	60%
EWS	State mandates EWS for law enforcement agencies to identify liability prone officers	50%
Identification	Automation of data (perhaps availability of CPOA EWS) increases ability to monitor factors identifying liability prone peace officers	100%
Identification	Plaintiffs' attorneys form a formal network to identify liability prone peace officers	40%
Satire	A laboratory accident in a genetic engineering facility develops an attorney specific virus which decimates California's current lawyer crop	10%
Standards	Governments gain more accountability over law enforcement agencies based on an incident, court decision or legislation	60%

Standards	Legislation mandates accreditation program for law enforcement agencies	80%
Standards	Legislation mandates annual or promotional health and/or psychological testing for law enforcement peace officers	90%
Standards	Legislature passes law which mandates state-wide fitness for duty evaluations	40%
Standards	POST or similar entity mandates fitness for duty examinations for peace officers	70%

## CONCLUSIONS

Law enforcement civil liability is not a hopeless subject. There are many simple, easy, inexpensive, and non-challenging methods to implement significant safeguards where there are none now. Conversely, most law enforcement agencies regardless of size have at least some of these methods in place, and they are not enough. Virtually all agencies have civil liability assigned to someone, whether it is a collateral duty for a supervisor (small agency) or the full time responsibility of an entire division (very large agency).

Questionnaires are not an accurate information gathering method. They can be, however, an invaluable tool from which to start research and when used with other methods of gathering expert opinion. The questionnaires showed that California agencies have developed useful and, sometimes unique, methods of dealing with officers who show tendencies of being a liability to themselves or their agencies. Further research needs to be conducted in the areas of: Early warning systems and identification; pre-employment screening and investigation of profiles; early intervention and peer counselling; employment contracts; and early and thorough preparation for lawsuits and claims.

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- 1 Also recommended for reading or viewing are an unpublished summary of a December 8, 1990, Police Misconduct Lawyers Referral Service Seminar put on at California State University, Los Angeles (edited by M. M. Wasson) and a video tape of a portion of a similar seminar put on by the same organization.
  - 2 42 United States Code §§1981, 1982, 1983, 1985, 1986 and 28 USC §§1343, 1331, 1332.
  - 3 42 USC §1983.
  - 4 Ibid, 3
  - 5 Civil Rights Attorney's Fee Awards Act of 1976 added 42 USC §1988.
  - 6 Monell v. Dept. of Social Services of City of New York, 436 U.S. 658, 98 S.Ct. 2018 (1978).

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- 7 Newspaper advertisements of O'donnel & Mandell "Do you have a SEXUAL HARASSMENT case?"  
Citizens against Lawsuit Abuse billboard along the westbound 91 Freeway at Alameda with (800) 293-CALA  
telephone number for further information
- 8 *Los Angeles Times*, July 22, 1992, "Members of Council May Face Trial in Police Suit"  
*Chicago Tribune*, May 22, 1992, "Court Finds City Liable in \$7.5 Million Suit"  
*Boston Globe*, Nov 21, 1991, "Family of Youth Killed by Officers Files suit Against Police"  
*Los Angeles Times*, Sep 6, 1991, "City Is Liable in Rape by Officer, Court Rules"  
*Los Angeles Times*, June 6, 1990, "Payment of \$850,000 Urged in Complaints Involving Deputies"  
*Los Angeles Times*, Sep 14, 1989, "Torrance Police to Pay \$82,500 in Punitive Damages"  
*Boston Globe*, April 13, 1989, "City of Everett Will Appeal \$4m Award in Brawl Case"
- 9 *Los Angeles Times*, Oct 11, 1991, "City Attorney Creates Units to Defend Police against Lawsuits"
- 10 *Los Angeles Times*, Dec 3, 1992, "'Moralistic' Issue Cited in Deputy's Firing" and Dec 4, 1992, "Block  
Denies Policy Change on Discipline"
- 11 Ibid, 1  
Handout material for January 20, 1993, Management Update Legal Seminar for the Los Angeles Police  
Department
- 12 *Risk & Insurance Magazine*, published monthly by Axon Magazine Group, 747 Dresher Road, Suite 500,  
Horsham, PA 19044-0980
- 13 *Law Enforcement Legal Defense Manual*, 421 Ridgewood Avenue, Suite 100, Glen Ellyn, IL 60137-4900
- 14 *Moon v. Winfield*, 368 F. Supp. 843 (N.D. Ill. 1973)
- 15 *Grandstaff v. City of Borger*, 767 F. 2d. 161 (5th Cir. 1985)
- 16 Report of the Independent (Christopher) Commission on the Los Angeles Police Department (July, 1991).
- 17 The Los Angeles County Sheriff's Department, A Report by Special Counsel James G. Kolts & Staff (July  
1992).
- 18 Ibid, 16, Forward (iii).
- 19 Ibid, 16, Forward (iv).
- 20 Ibid, 17, page 195.
- 21 Ibid, 17, page 282.
- 22 Ibid, 17, page 342.
- 23 Deputy City Attorney Richard James, Los Angeles City Attorney's Office; Sergeant Harold L. Hall, Legal  
Affairs Division, Los Angeles Police Department; Detective James M. Dawson, traffic collision  
reconstructionist, South Traffic Division, Los Angeles Police Department; Lieutenant Tim Halford (retired),  
attorney and Commanding Officer, Legal Affairs Division, Los Angeles Police Department; Gordon W.  
Trask, Principal Deputy County Counsel, County of Los Angeles; Sergeant Gordon Graham, attorney and  
field supervisor, California Highway Patrol; Martin J. Mayer, Mayer & Associates --- In the latter two cases,

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seminars put on by the interviewees were attended. In Mayer's case, only a short discussion was held after the seminar; in Graham's case, an extensive interview occurred.

24 Ibid, 16.

25 Ibid, 17.

26 Ibid, 16, page 55.

27 Ibid, 17, page 3.

28 Ibid, 17, pages 159-160.

29 Lieutenant Gary Stromlund, Sergeant Julio Nunez, Officer Dennis Bair, Motor Officer Ed Kirbus, South Traffic Division, Los Angeles Police Department

30 David Brown, Constituent Relations Deputy for Los Angeles Councilman Mark Ridley-Thomas; Lieutenant Dennis Burns, Civil Liability Section, Los Angeles County Sheriffs Department; Lieutenant Tim Halford (retired), attorney and Commanding Officer, Legal Affairs Division, Los Angeles Police Department; Richard L. James, Deputy Los Angeles City Attorney, Civil Division; Tom Shadowen, retired Los Angeles County Deputy Marshall and current Real Estate Broker in South Central Los Angeles; Mildred Simmons, President, African-American Towing Association; Sergeant Ann Young, South Traffic Division, Los Angeles Police Department; Captain Garrett Zimmon, Commanding Officer, Southwest Area, Los Angeles Police Department.

31 Jim Golightly, retired advertising consultant, former president of a major Spanish language advertising agency, former Director of Advertising for Pacific Telephone; Marshall Langberg, Chief, Legislative Unit, Los Angeles County Administrator's Office, and former Executive Director, Illinois Economic and Fiscal Commission; Julie Snyder, computer program manager, Integrated Solutions Systems Corporation (IBM); Stephen Snyder, ballistic missile engineer, McDonnell-Douglas Corporation; Cathy Watters, housewife and recent law school graduate; Jeffery Williams, small business owner and gay activist.

32 For a detailed list of responses to the questionnaires, the author may be contacted c/o the Los Angeles Police Department, 150 North Los Angeles Street, Los Angeles, California 90012.



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# **"What Actions Will Law Enforcement Agencies Take To Deal With Peace Officers Identified As Significant Civil Liabilities?"**

## **FUTURES STUDY**

### **INTRODUCTION**

They may be called "bad," "corrupt," "heavy handed," or "out of control," but when they are also called "cops," neither the citizens nor the governments which represent the citizens can afford, in any sense of the term, a problem peace officer. Law enforcement supervision and management up through the rank of chief of police or sheriff have found that they, too, literally and practically cannot afford problem peace officers. Fellow officers also fall victim to the negative fallout left by a problem officer. Fortunately, these problem officers are few in number. The effects of improper or negligent peace officer actions, which can be on or off duty and which can be extremely devastating, fall into several categories:

- \* Adverse relations with the communities served.
- \* Lack of credibility within the Criminal Justice System.
- \* Negative stories by the news media.
- \* Increased challenges in civil courts with a significant monetary loss due to attorney fees, settlements, and adverse judgments.
- \* Low morale within law enforcement agencies and significant officer turnover.
- \* Government bankruptcy, both in a fiscal sense and in public confidence.

None of these situations exists independent of the others. Failure to adequately deal with the problem peace officer today and in the future will seriously and adversely affect the ability of law enforcement to complete its mission.

### **THE LAW**

For years, court decisions have attempted to limit or restrict law enforcement actions with varying degrees of success. These court decisions have primarily been in the areas of coerced confessions, illegal search and seizure, and exclusion of evidence. Even before these decisions,

legislation and court decisions governing liability areas were proceeding. Knowledge of certain civil rights legislation and court decisions allows one to better understand past and present civil liability laws and their effects on the future. The post-Civil War reconstruction era Federal Civil Rights Act of 1871<sup>1</sup> made it illegal for any person to deprive another "... of any rights, privileges, or immunities secured by the Constitution and laws,..."<sup>2</sup> and that the person depriving another "... shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress."<sup>3</sup> This legislation provides the basis for lawsuits based on an alleged violation of a person's civil rights.

The United States Congress amended the Federal Civil Rights Act of 1871 by the Civil Rights Attorney's Fee Awards Act of 1976<sup>4</sup> to allow for the award of attorneys' fees for the prevailing party. In 1978, the United States Supreme Court in *Monell v. Dept. of Social Services of City of New York*<sup>5</sup> held that the Federal Civil Rights Act was applicable to municipalities as well as to persons. Plaintiffs' attorneys did not let these changes go unnoticed. To attorneys, the changes meant that if plaintiffs prevail in any portion of the case, attorney fees could also be awarded. This made lawsuits against government and governmental employees profitable. The "deep pockets" of municipalities would guarantee payment. To law enforcement officers and management, the changes meant they were soon to confront attorneys in a new specialty of the law, police abuse cases.

## **THE ISSUE**

**By the year 2004, what actions will law enforcement agencies take to deal with peace officers identified as significant civil liabilities?**

To refine the issue to a concise futures issue, two methods were used. First, a review of reports and legal guides was conducted. Next, Los Angeles Deputy City Attorney Richard James, Los Angeles Police Lieutenant H. Tim Halford and Sergeant Harold L. Hall, Legal Affairs Division, Los Angeles Police traffic collision reconstructionist Detective James M.

Dawson, South Traffic Division, all legal experts whose responsibility is to defend the Los Angeles Police Department against lawsuits, were interviewed.

These two approaches revealed that two key issues are not properly being addressed in California law enforcement. The first issue is how can and should liability prone peace officers be identified. The second issue is what to do with peace officers who have become a liability to themselves and everyone around them to protect the officer, the agency, and the community. These issues, and the greater subject of civil liability, have been and are the subjects of seminars, legal reference manuals, reports, journals, conferences, and debate. Two recent blue ribbon committee reports, one on the Los Angeles Police Department<sup>6</sup> and the other on the Los Angeles County Sheriff's Department<sup>7</sup>, documented patterns of behavior by peace officers which have exposed many of the officers, agency command staff, agencies, and civil governments to unwarranted civil liability. While some of the officers were totally innocent of any wrong doing, in many of the cases in which the officers acted improperly, little or no action was taken by the agencies to reduce the liability. The Christopher Commission indicated that:

"... the Commission staff reviewed the files of all 83 cases of alleged excessive or improper force ... that resulted in a settlement or judgment of more than \$15,000. ... The LAPD's investigation ... was flawed in many respects, and discipline against the officers involved was frequently light or nonexistent. **Moreover, the LAPD does not have adequate procedures in place to review or learn from the results of this litigation (emphasis added).**"<sup>8</sup>

The Los Angeles County Sheriff's Committee Special Counsel Kolts and his staff, too, indicated that:

"(The Sheriff's) Department, like the LAPD, has too many officers who have resorted to unnecessary and excessive force. The Department has not done an adequate job disciplining them. **It has not dealt adequately with those who supervise them (emphasis added).**"<sup>9</sup>

"(Sixty-two) deputies who, between January 1986, and April 1992, have been investigated at least five times for shootings or complaints of Force/Harassment allegations ... (were) responsible for nearly 500 separate Force/Harassment investigations. One deputy alone accounted for 27 investigations; another was responsible for 25. Seventeen of the deputies were responsible for 22 lawsuits resulting in nearly \$3.2 million in jury awards or settlements paid out by the County."<sup>10</sup>

## SCANNING FOR INFORMATION

Litigation and advertisements for and against litigation can be found everywhere.<sup>11</sup> Many articles in newspapers and news magazines refer to law enforcement losses in individual civil cases, the size of those losses, and the actions taken by officers which caused the losses or settlements in the cases.<sup>12</sup> Officers who are significant civil liabilities, the identification of those officers, and what to do with those officers are subjects at the heart of many discussions, but these subjects are seldom referred to directly. There are, however, a few exceptions. As reported in the *Los Angeles Times* in 1991,<sup>13</sup> the Los Angeles City Attorney's Office reorganized its Civil Liability Division specifically to defend against major lawsuits more effectively. Also in the *Los Angeles Times* in late 1992,<sup>14</sup> an internal feud surfaced within the Los Angeles Sheriff's Department between a Lakewood Station captain and Sheriff Sherman Block. The question was whether deputies were being fired because of their adverse civil liability to the Department. The captain testified at a deputy's hearing that such a change in Department policy had occurred. Block denied it.

## Statistics

An interesting fact is found when you search for statistics about law enforcement civil liability cases, awards and settlements. Everyone says that lawsuits, awards and settlements are up, but there are no hard facts to back up their statements. There is no central repository of data. There are no statistics. Individual law enforcement agencies may keep data, but they either do not wish to release it or they intermix it with other data in such a way as to make it unusable. One reason advanced was the advantage this information could be to plaintiff attorneys. Another reason is to hide the problem and the lack of success in dealing with it from the public.

## Literature Search

Virtually all of the literature on the issue is found in statutes, legal cases, texts on those subjects, and specialty publications such as "Risk & Insurance"<sup>15</sup> and the "Law Enforcement

Legal Defense Manual."<sup>16</sup> Failure to ascertain that a problem exists, failure to take action, negligent retention, retraining, and assignment are the five subjects most covered. In *Moon v. Winfield*,<sup>17</sup> the court found that if a police superintendent is negligent in retaining an officer who had numerous citizen complaints against him, that command officer may be held liable for damages if the officer subsequently assaults a citizen. In the same case, the court held that if a chief knew, or should have known, of the excessive force, malicious conduct or questionable mental stability of an officer, that chief may be held liable for future injuries if the chief fails to suspend the officer or otherwise prevent public contact while the chief is attempting to terminate the officer. In *Grandstaff v. City of Borger*,<sup>18</sup> after the police chief knew that his officers repeatedly engaged in widespread, reckless acts with deadly force while pursuing suspects, the chief took no action to correct the conduct. The chief and his department became liable.

Two other sources found have already been discussed. Those are the special reports on the Los Angeles Police Department<sup>19</sup> and the Los Angeles County Sheriff's Department.<sup>20</sup> From the Christopher Report, the following finding concentrates on the present and future issue:

"The failure to control (a significant number of officers ... who repetitively use excessive force ... and persistently ignore the written guidelines of the Department regarding force<sup>21</sup>) is a management issue that is at the heart of the problem. ... The Department not only failed to deal with the problem group of officers but it often rewarded them with positive evaluations and promotions."<sup>22</sup>

In the Kolts Report, one comment and two recommendations were found which directly deal with the issue:

"The threat of litigation can be a powerful vehicle for correcting misconduct. But it can also be a powerful disincentive for the LASD to investigate and police itself."<sup>23</sup>

"... Where a pattern of repeated use of unnecessary force is found and a deputy does not benefit from supervisor or professional mental health counseling, the deputy should be discharged."<sup>24</sup>

"... We recommend the implementation of monitoring programs to make sure that captains are using force tracking systems and other sources of information to reduce excessive force, impose discipline, reward good behavior, take care of problem deputies, and in general manage their stations in a manner consistent with community-based policing standards and in a way to reduce dissatisfaction in the community."<sup>25</sup>

## **Seminars**

One very bountiful source of information is the professional seminar, presented either by an organization of plaintiffs' attorneys (i.e., Police Misconduct Lawyers Referral Service) or by an attorney specializing in defending peace officers or working with agencies to prevent lawsuits. The seminars review current cases while presenting successful and new trial tactics and approaches for suit or defense.<sup>26</sup>

## **SUB ISSUES**

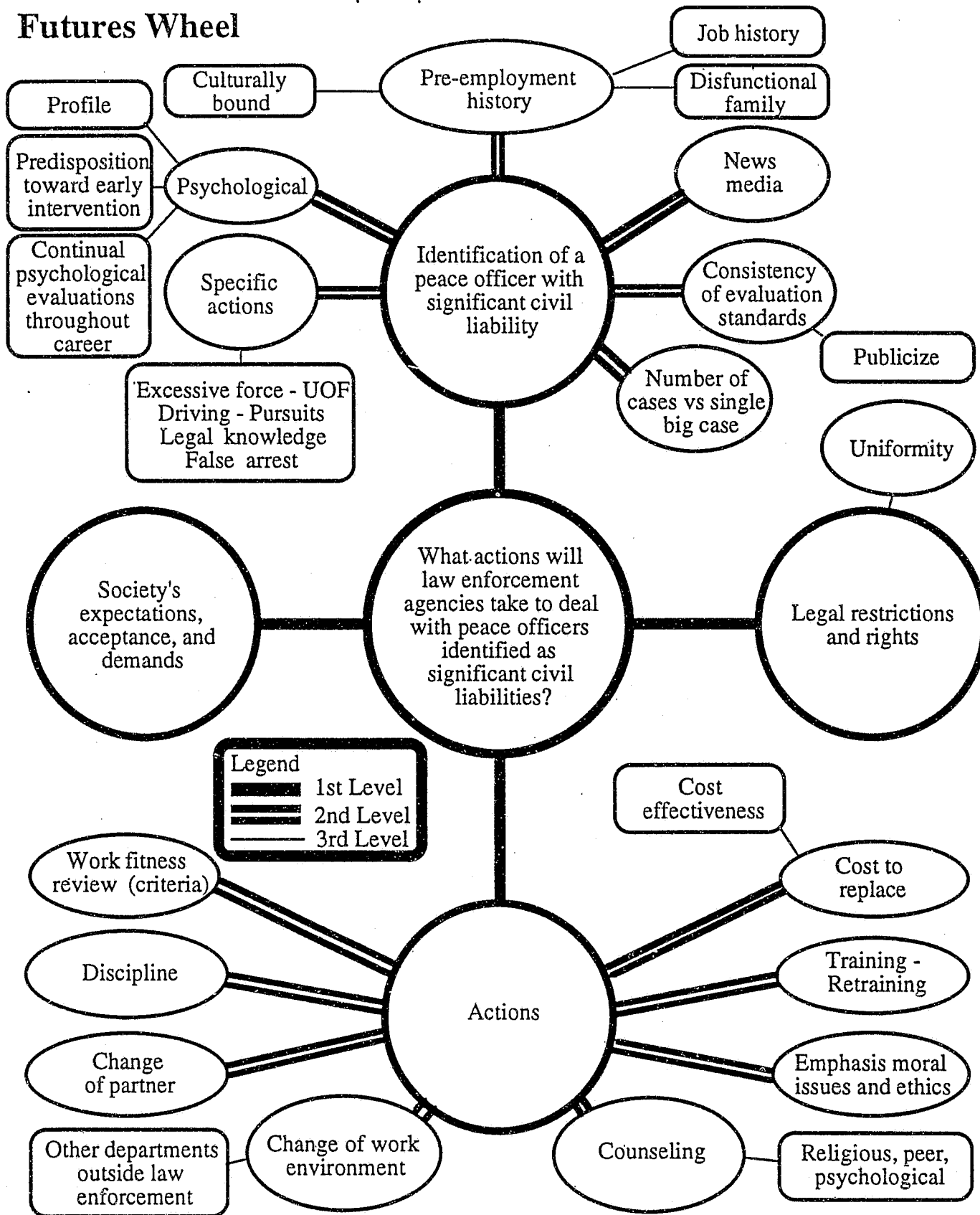
Three sub issues were identified using two methods. The same persons<sup>27</sup> interviewed to refine the issue were queried as to what they saw were the primary sub issues. Then, Lieutenant Gary Stromlund, Sergeant Julio Nunez, Officer Dennis Bair, and Motor Officer Ed Kirbus<sup>28</sup> discussed the information and beliefs developed to that time and the influence of those on the issue and on law enforcement. Using a flip chart, this group charted their findings on a futures wheel (see next page). Those areas which developed as primary concerns by both groups were chosen by the author as sub issues. Those sub issues are:

**How will officers be identified as significant civil liabilities?**

**What will be the legal limitations on the actions which can be taken toward the identified officers?**

**How will agencies adopt alternatives to reduce the civil liabilities caused by the officers?**

# Futures Wheel





## IDENTIFICATION OF CURRENT AND FUTURE STATUS

To identify both current trends and activity levels of the issue and sub issues, and to evaluate future trends and events, three traditional methods of futures research were used: interviews, questionnaires and group dynamics. All three involved expert judgment.

Experts within the field were personally interviewed<sup>29</sup> first to gain a broad picture of the civil liability issue within law enforcement. Those sought out for interviews were legal authorities employed by law enforcement agencies to reduce liability, provide training, advise command staff, and/or handle discovery, or they were legal counsel for local governments charged with defending agencies and officers. The interviews were very unstructured to allow each expert to discuss the areas of greatest personal interest. The information gained was used to formulate the questionnaires and to facilitate group dynamics. Although it would have been very entertaining, no interviews were sought from the plaintiff's side of the bar for two reasons. First, a video tape of a plaintiff attorney seminar was available for review. Second, plaintiff attorneys are very suspect of law enforcement. Instead, the written approach was used.

A test questionnaire was developed and tried on Command College Class 18 members (see Addendum #1). Based on the responses to the test questionnaire, two final questionnaires were developed. Although very similar, each was to target one of two very dissimilar interest groups:

- \* All California chiefs of police and sheriffs (see Addendum #1).
- \* California attorneys whose specialty was representing plaintiffs in police abuse cases (see Addendum #1).

The questionnaires were formatted for easy, short answer completion. They queried the current status of the three sub issues on one side and sought current trends and forecasts of future events on the other. Because of the way many questionnaires were answered, forecasts of changes to current trends were also obtained. The questionnaires mailed and returned completed were as follows:

<u>Addressee</u>	<u>Mailed</u>	<u>Returned</u>
* Chiefs of Police and Sheriffs	430	132
* Attorneys for plaintiffs	8	6

The completed law enforcement questionnaires represented every size and type of agency. They revealed knowledge, activities and attitudes ranging from total ignorance and a lack of concern to extreme sophistication, concern and activity levels. The responses to some questionnaires were extremely detailed, going on for several pages. One contained only two words. These questionnaires were analyzed and synthesized by the author into sixteen current trends, nineteen forecast trend changes, and fifty-three forecast events (See Pages 26, 17, and 20-22, respectively). The trends, trend changes, and events were then submitted for analysis in the group dynamics sessions (Nominal Group Technique sessions).

Due to the small number of attorney responses and the nature of the answers, an extensive analysis was not possible. Some of these questionnaire answers were quite extreme and definitely biased toward predictable directions. As an aside, the author found that the questionnaires returned by chiefs and sheriffs covered the full spectrum of responses although there, too, the majority of responses was in predictable directions.

### Nominal Group Technique

Three Nominal Group Technique (NGT) sessions were scheduled with significantly different participants. The first NGT group was drawn from Los Angeles City and County government and law enforcement and from community members and activists within South Central Los Angeles (July 8, 1993)

The following persons were invited:

- \* David Brown, Constituent Relations Deputy for Los Angeles Councilman Mark Ridley-Thomas - Black councilmanic deputy who works for a Black, activist City Councilman.
- \* Lieutenant Dennis Burns, Civil Liability Section, Los Angeles County Sheriff Department - In charge of section which handles claims against the Department.

- \* Lieutenant Tim Halford, Commanding Officer, Legal Affairs Division, Los Angeles Police Department - In charge of division which handles claims, investigation, training and discovery (now retired and legal advisor for Fullerton Police Department).
- \* Richard James, Deputy Los Angeles City Attorney, Civil Division - Defends City and officers in civil liability lawsuits.
- \* Tom Shadowen, retired Los Angeles County Deputy Marshall and current Real Estate Broker in South Central Los Angeles - Has a law enforcement prospective yet brings with him a Black businessman's prospective of South Central Los Angeles
- \* Mildred Simmons, President, African-American Towing Association - Black activist whose tow drivers have had difficulties with police, to include a controversial shooting death.
- \* Sergeant Ann Young, South Traffic Division, Los Angeles Police Department - Brings a Black, female, supervisory law enforcement prospective.
- \* Captain Garrett Zimmon, Commanding Officer, Southwest Area, Los Angeles Police Department - Responsible for a major police Area in South Central Los Angeles; Command College graduate.

Each was personally invited and then sent a follow-up letter. Enclosed with the letter was a blank sample of a questionnaire (Addendum #1) which had been sent to California chiefs and sheriffs. After a luncheon buffet, a quick review of the purpose and the methodology of the study was provided. Printouts of questionnaire responses on the current status of the three sub issues were reviewed and discussed.

Each of the group members was asked to write down at least one current trend. Each trend was then written on a flip chart and discussed. The group had a great deal of difficulty differentiating trends from events. As activity waned, the members were provided with preliminary copies of the trend results (24 pages) from chief and sheriff questionnaires<sup>30</sup>. After several times around the table, the group ultimately produced the following results:

Trend Number	Trend Statement Nominal Group Technique, Group #1	Direction
1	Sexual harassment as a civil liability for law enforcement	Increasing
2	Holding law enforcement first line supervisors more accountable in civil liability lawsuits	Increasing
3	Law enforcement agencies using communication with the public as a means of reducing civil liability	Increasing

4	Need for an errors and omissions insurance as is available in other industries for law enforcement officers	Increasing
5	The current practice of governments paying for punitive awards against peace officers	Decreasing
6	The effect of the fear of civil liability on the average length of time each law enforcement call for service takes	Increasing
7	Screening candidates for peace officer positions	Increasing
8	Complication levels in law enforcement as a result of rules, regulations, and liability	Increasing
9	Suing law enforcement is the top growth area for attorneys	Status quo
10	Fear of civil liability lawsuits among law enforcement officers	Increasing
11	The negative effect of civil liability on law enforcement officer initiated activity	Increasing
12	Punitive awards against peace officers in civil liability lawsuits (now usually paid by government)	Increasing
13	Credibility of peace officers in court	Decreasing
14	Reassignment of high liability prone officers out of high liability positions	Increasing

The same technique used for trends was then used to forecast events. Group members were then asked to forecast the probability of each event occurring, expressed as a percentage. All forecasts from each member were recorded to form the following table:

Event Number	Event Statement Nominal Group Technique, Group #1	Probability Ten Years From Now (0%-100%)
1	State prohibits cities and counties from paying punitive awards against peace officers	70, 70, 50, 50, 25, 20 = 47.5
2	Media blitz on peace officer who successfully sues citizen who was a complainant	25, 10, 10, 10, 5, 5 = 10.9
3	Court decision decides that non-resolved personnel complaints may be a pattern of conduct	40, 40, 30, 30, 25, 5 = 28.3
4	Legislation mandates that only current events, not past history, may be considered in civil litigation cases	15, 5, 0, 0, 0, 0 = 3.3
5	Peace officer is discharged due to the officer's high civil liability status only	80, 80, 75, 75, 70, 50, 50 = 68.8
6	Major city or county shifts award payments from general account to law enforcement agency salary account	40, 30, 30, 30, 15, 10, 5 = 32.6

7	Legislation or a court decision mandates computer EWS	100, 100, 100, 100, 80, 80, 75 = 90.7
8	State institutes a statewide EWS covering all law enforcement agencies	100, 100, 100, 80, 80, 50 = 85.0
9	Legislation or the courts mandates a peace officer paid/supported trust fund for punitive awards	20, 10, 10, 5, 0, 0, 0 = 6.4
10	State mandates civilian review of all law enforcement discipline	60, 50, 50, 50, 35, 20, 0 = 37.8
11	Municipality goes broke after a large civil liability award against it	100, 100, 90, 90, 90, 80, 80 = 90.0
12	Budget problems cause a law enforcement agency to go to an all volunteer basis	25, 10, 10, 5, 5, 0, 0 = 7.8
13	Work stoppage by a law enforcement union due to a civil liability punitive award	100, 100, 90, 85, 85, 85, 80 = 89.3
14	Legislation places a cap on civil litigation awards	100, 100, 100, 100, 100, 100, 20 = 88.8
15	Legislation places a cap on civil litigation attorney fees	70, 70, 70, 70, 50, 40, 20 = 55.7
16	An agency hires a full time, paid public relations firm	100, 100, 100, 100, 100, 100, 50 = 92.5

The results from this group were barely usable, with the trend information almost meaningless because it was incomplete. Due in part to very divergent opinions and a lack of focus, this group was only successful in concentrating on discussing and predicting future events. However, the information from the first NGT group was used as a primer for the second group and was used later to fill in scenarios.

The second NGT group was drawn from business, legal and social acquaintances of the author with no ties or contacts with the law enforcement civil liability question (July 18, 1993). This group was considerably more focused. The following persons were invited and participated:

- \* Marshall Langberg - Chief, Legislative Unit, Los Angeles County Administrator's Office; formerly Executive Director, Illinois Economic and Fiscal Commission.
- \* Jim Golightly - Retired advertising consultant; former president of a major Spanish language advertising agency; former Director of Advertising for Pacific Telephone.
- \* Julie Snyder - Computer program manager, Integrated Solutions Systems Corporation (IBM).

- \* Stephen Snyder - Ballistic missile engineer, McDonnell-Douglas Corporation.
- \* Cathy Watters - Mother of four, housewife and recent law school graduate currently working in the San Bernardino County District Attorney's Office
- \* Jeffery Williams - Small business owner and gay activist.

Each was personally invited and orally provided an outline of the project. After a meal and time to get acquainted, a quick review of the study to that point was provided. Printouts of questionnaire responses to questions on the current status of the three sub issues were reviewed and discussed.

Each of the group members was given a three page evaluation form (see next page as combined into a continuous chart) of nineteen trend changes projected by chiefs and sheriffs in their returned questionnaires.

**NGT #2 - TREND CHANGE EVALUATION FORM (19 Trend Changes)**

Area	Trend Change Statements Derived from Questionnaires	Years Until Probability First Exceeds Zero	Probability		Impact on the Issue If the Trend Occurred	
			Five Years From Now (0%-100%)	Ten Years From Now (0%-100%)	Negative (0-10)	Positive (0-10)
Budget	Continued budgetary constraints force law enforcement agencies to significantly reduce proactive programs aimed at the reduction of liability exposure					
Budget	Continued funding deficits significantly prevent law enforcement agencies from doing an adequate job of training in citizen complaint investigation and reporting, even though legally mandated to do so					
Budget	New methods of funding and equipping law enforcement will be developed					
Citizen Review	Significant increase in civilian oversight of law enforcement operations, personnel complaint handling, and peace officer discipline					
Crime	Significantly greater economic and social collapse leading to much higher levels of crime and violence					
Criminal	Significant increase in competent (versus political) federal and state prosecutions of peace officers for violations of suspects' rights					
Discipline-Courts	Law enforcement agencies likely to have less flexibility regarding disciplinary actions due to court actions					
Discipline-POA	Increases in POA's taking legal actions challenging law enforcement agency actions taken against liability prone officers					
EWS	Once law enforcement EWS are in place, plaintiff's attorneys will use EWS against law enforcement agencies and officers in court					
Laws	Excessive amounts of legislation on civil liability process, awards, caps, countersuits, etc., will be passed, further confusing the issues					
Lawsuits & Claims	Civil liability trend will swing back to the more conservative side within next 10 years					
Lawsuits & Claims	Punitive damage awards for law enforcement administrators become common practice of juries and courts					
Reduction	Chiefs and sheriffs will more closely scrutinize outside employment of peace officers which expose the officers and/or agencies to increase civil liability					
Reduction	Increasingly and in significant areas, agencies begin to implement policies which forbid their officers from becoming involved in enforcement actions, thus reducing exposure to liability					
Reduction	POA's and city attorneys are going to become much more aggressive in their defense of peace officers and law enforcement agencies when warranted					
Service	Economic and other pressures will cause significant regionalization of law enforcement agencies					
Service	Increased specialization of roles of peace officers after the year 2000; patrol by security company or local agency; special enforcement by regional law enforcement agency; investigation by regional detective agency					
Service-Budget	Peace officers will return to and be more frequently involved in reactive, call for service duties than in crime prevention, school resource programs, etc., because of reduced resources					
Standards-Citizen	As the population becomes collectively older, society in general will become less tolerant of differences, and will expect and accept a less tolerant law enforcement presence					

The members were instructed to read all projected trend changes, and then they were to reword, combine, and reduce the nineteen to what they thought was a workable list.

After some discussion, the members were polled and, with further discussion, decided on fourteen trend changes. After discussion on the probability and impact of each trend change on the issue, an evaluation form was completed individually by each member. The members were cautioned to remember that certain changes to trends would affect other trend changes. They should attempt to consider subsequent changes when deciding on probability and impact.

The first results were then discussed among the members, with some members altering their evaluations based on the discussion. The surviving trend changes together with evaluation results are below (See Addendum #2 for detailed charts and graphs).



## NGT #2 - TREND CHANGE EVALUATION FORM

(With Summary Results Information)

Trend #	Area	Trend Change Statement	Years Until Probability First Exceeds Zero	Probability		Impact on the Issue If the Trend Occurred	
				5 Years From Now (0%-100%)	10 Years From Now (0%-100%)	Negative (0-10)	Positive (0-10)
1	Budget	Continued budgetary constraints force law enforcement agencies to significantly reduce proactive programs aimed at the reduction of liability exposure and mandated citizen compliant investigation and liability training	(0 - 4 Range) 2.3 years	(25% - 80%) 54%	(60% - 95%) 76%	(-10 to -4) -6.2	
2	Civil Liability	Civil liability trend will swing back to the more conservative side within next 10 years	(3 - 6 Range) 4.6 years	(10% - 50%) 28%	(30% - 90%) 68%		(0 to +10) +5.8
3	Courts	Punitive damage awards for law enforcement administrators become common practice of juries and courts	(0 - 1 Range) 2.2 years	(30% - 50%) 42%	(50% - 95%) 69%	(-8 to -1) 4.6	
4	Criminal	Significant increase in competent (versus political) federal and state prosecutions of peace officers for violations of suspects' rights	(2 - 5 Range) 4.3 years	(10% - 75%) 52%	(70% - 80%) 77%		(+3 to +4) +3.3
5	Reduction	Increasingly and in significant areas, agencies begin to implement policies which forbid their officers from becoming involved in enforcement actions, thus reducing exposure to liability	(1 - 5 Range) 2.3 years	(25% - 60%) 48%	(35% - 100%) 71%		(-7 to +10) +1.8
6	EWS	Once law enforcement EWS are in place, plaintiffs attorneys will use EWS against law enforcement agencies and officers in court	(0 - 3 Range) 0.7 years	(50% - 100%) 88%	(90% - 100%) 97%	(-1 to +2) -5.7	
7	Laws	Excessive amounts of legislation on civil liability process, awards, caps, countersuits, etc., will be passed, further confusing the issues	(0 - 5 Range) 2.0 years	(20% - 80%) 53%	(60% - 100%) 82%	(-7 to +1) -2.4	
8	Reduction	Chiefs and sheriffs will more closely scrutinize outside employment of peace officers which expose the officers and/or agencies to increased civil liability	(0 - 3 Range) 1.5 years	(50% - 90%) 75%	(75% - 100%) 92%		(+2 to +5) +3.6
9	Reverse	POA's and city attorneys are going to become much more aggressive in their defense of peace officers and law enforcement agencies when warranted	(2 - 7 Range) 4.3 years	(10% - 60%) 29%	(50% - 100%) 67%		(+1 to +8) +4.7
10	Discipline	Law enforcement agencies likely to have less flexibility regarding disciplinary actions	(2 - 5 Range) 3.0 years	(25% - 50%) 38%	(30% - 100%) 59%	(-6 to -3) -4.2	
11	Discipline	Increases in POA's taking legal actions challenging law enforcement agency actions taken against liability prone officers	(1 - 3 Range) 1.8 years	(15% - 50%) 43%	(20% - 100%) 70%	(-5 to -2) -3.8	
12	Citizen Review	Significant increase in civilian oversight of law enforcement operations, personnel complaint handling, and peace officer discipline	(2 - 5 Range) 3.2 years	(10% - 60%) 38%	(15% - 80%) 53%	(-3 to +2) -1.3	
13	Budget	Economic and other pressures will cause significant regionalization of law enforcement agencies	(1 - 5 Range) 2.8 years	(10% - 60%) 47%	(40% - 100%) 73%		(-3 to +5) +1.5
14	Service-Budget	Peace officers will return to and be more frequently involved in reactive, call for service duties than in crime prevention, school resource programs, etc., because of reduced resources	(2-10 Range) 4.0 years	(0% - 50%) 28%	(30 - 100%) 55%	(-6 to +5) -2.0	

Each member was then given an eight page evaluation form of 53 events drawn from the returned chief of police and sheriff questionnaires. The events which appeared on that form are reproduced below:

- \* State funding is specifically designated for local law enforcement.
- \* Voters decide to split California into Northern California and Southern California.
- \* A court decision finds both a city/county and the chief/sheriff liable for failure to identify and monitor civil liability prone peace officers.
- \* City councils/county supervisors shift to demanding annual reports on law enforcement civil liability, rewarding or penalizing agencies based on the reports.
- \* A court awards an extremely large amount against a city or county, forcing it into bankruptcy.
- \* City/county agency disbands after major scandal and huge civil judgment which is beyond the city/county's ability to pay.
- \* There is increased funding for liability insurance or liability countermeasures (more attorneys, increased civil liability staff), but funding is absent for identification and proactive risk reduction measures.
- \* Major budget difficulties cause virtually all agencies to limit legal counsel, claims investigation, administrative investigations, and training.
- \* Greater and fixed penalties are enacted for frivolous lawsuits.
- \* A California Supreme Court decision adversely affects local agencies' ability to deal with peace officer civil liability.
- \* A civil judgment is decided against a law enforcement agency for failure to recognize and rectify a potential (undocumented, with no citizen complaints, only educated hunch by a supervisor) liability issue with a peace officer.
- \* A court decision increases personal civil liability of peace officers versus "deep pockets" agency or municipality liability.
- \* Plaintiff's attorney uses an agency's own Early Warning System (EWS) to prove the agency knew of liability prone officers and did nothing.
- \* Additional legal limitations are enacted restricting law enforcement agencies as to the actions which might be taken towards identified, liability prone peace officers.
- \* Laws are amended to allow agencies to deal more effectively with liability prone peace officers.
- \* Federal legislation on civil rights suits limits awards and attorney fees.
- \* Legislation gives peace officers full and total immunity from civil liability if acting in the course and scope of employment; liability is assigned to the city/county.
- \* Legislation limits lawsuits, limits settlements, and forces lawsuit arbitration.

- \* Legislation increases immunities in some areas of civil liability (i.e., pursuits conducted within proper policy).
- \* Legislation reduces civil liability exposure of law enforcement agencies.
- \* Legislation is enacted which requires non-litigious resolution of complaints against peace officers and agencies.
- \* Labor POA inroads through legislation or MOUs restrict or eliminate management's ability to effectively deal with identified liability prone peace officers.
- \* Law enforcement candidate selection screening is hampered by legislation imposing further restrictions.
- \* Legislation increases peace officer liability for specific incidents or negligent behavior.
- \* Legislation is passed which mandates increased training of peace officers on civil liability reduction.
- \* Worker's compensation insurance is tightened up, and a cap is placed on it.
- \* Agencies prohibit pursuits in almost all instances; crashes and civil liabilities are reduced.
- \* Governments decide to reduce services in areas of high civil liability exposure.
- \* State mandates retraining of peace officers identified as liability prone in the areas of officer involved traffic collisions, UOF, and pursuits.
- \* Crime increases to the level that society condones excessive force by peace officers.
- \* In the year 2000, significant numbers of crack, nutrient starved and alcohol syndrome babies grow up to become psychologically unbalanced teenagers.
- \* Social and civil unrest between haves and have nots occurs.
- \* State-wide binding arbitration for discipline law is enacted.
- \* Civil rights of peace officers in disciplinary matters is reduced by court decisions.
- \* In a court decision, an agency's gross violation of an officer's rights causes restrictions for all agencies.
- \* Legislation is enacted to give peace officers added protection in internal investigations of peace officer misconduct.
- \* Statutory protections (i.e., Government Code 3300) for law enforcement peace officers is repealed.
- \* Legislation provides for public disclosure of peace officers' personnel and disciplinary records.
- \* Society's (the community's) influence is overwhelmed by legislation contrary to their interests (e.g., POAs get to the legislators).
- \* Government Code 3300 is modified to preclude POA MOUs from increasing peace officer rights.
- \* There is a significant increase in the recruitment of all minorities and women by law enforcement agencies.

- \* Another Rodney King type incident occurs, sparking rioting, looting, etc.
- \* Out of control violence by criminals (i.e., a riot) results in significant acts of violence towards responding law enforcement peace officers.
- \* Citizens demand and get closer public scrutiny of agencies through such methods as citizen review boards.
- \* Dramatic downturn in fiscal problems causes loss of programs and projects such as DARE, business awareness, etc.
- \* Dramatic worsening of fiscal problems state-wide causes many small agencies to close and into regionalization.
- \* National guard personnel are used to supplement law enforcement for crime intensive communities.
- \* After the year 2000, peace officers are held less accountable for civil liability due to social upheaval between haves and have nots.
- \* Legislation mandates accreditation program for law enforcement agencies.
- \* Legislation mandates annual or promotional health and/or psychological testing for law enforcement peace officers.
- \* POST loses all funding for training and setting standards.
- \* POST increases mandated training hours for all peace officers.
- \* A significant, non-lethal weapon is developed and implemented to give peace officers more alternatives in UOF situations where lethal force is currently employed.

They were instructed to read all events and then combine and reduce the list of events. After some discussion, the members were polled and, with further discussion, decided on fourteen events. After discussion on the probability and impact of each event on the issue, the evaluation form was completed. As with the trend changes, the results were then discussed among the members, with some members altering their evaluations based on the discussion (See below for a Summation of event results. See Addendum #3 for detailed charts and graphs). This group worked well together in spite of different backgrounds and outlooks. They were very successful in evaluating and forecasting events, and changes to trends.

## NGT #2 - EVENT EVALUATION FORM

(With Summary Results Information)

Trend #	Area	Event Statement	Years Until Probability First Exceeds Zero	Probability		Impact on the Issue If the Event Occurred	
				Five Years From Now (0%-100%)	Ten Years From Now (0%-100%)	Negative (0-10)	Positive (0-10)
1	Lawsuits & Claims	Court decision finds both a city/county and chief/sheriff liable for failure to identify and monitor civil liability prone peace officers	(2 - 5 Range) 3.5 years	(10% - 50%) 30%	(25% - 70%) 53%	(-5 to +2) -1.8	
2	Budget	A court awards an extremely large civil judgment against a city or county which is beyond its ability to pay, forcing it into bankruptcy	(1 - 8 Range) 4.1 years	(10% - 75%) 41%	(25% - 95%) 63%	(-5 to -3) -4.0	
3	Budget	Major budget difficulties cause virtually all agencies to limit legal counsel, claims investigation, administrative investigations, and training	(1 - 4 Range) 1.8 years	(25% - 100%) 65%	(25% - 100%) 67%	(-9 to -2) -5.3	
4	Abuse of Courts	Greater and fixed penalties for frivolous lawsuits	(2 - 5 Range) 2.7 years	(20% - 100%) 45%	(40% - 100%) 63%		(+2 to +8) +4.9
5	Courts	Court decision limits local agencies as to actions which can be taken towards identified liability prone officers, adding officer rights and adversely affecting agency ability to deal with peace officer civil liability	(1 - 5 Range) 3.0 years	(2% - 75%) 50%	(20% - 95%) 71%	(-9 to +2) -5.4	
6	Courts	Court decision increases personal civil liability of peace officers versus "deep pocket" agency or municipality liability	(2 - 5 Range) 3.2 years	(20% - 40%) 29%	(40% - 100%) 71%		(-3 to +7) +1.5
7	EWS	Plaintiff's attorney will use agency's EWS to prove agency knew of liability prone officers and did nothing	(0 - 5 Range) 3.2 years	(20% - 95%) 44%	(50% - 100%) 71%	(-8 to -2) -4.2	
8	Laws	Legislation reduces civil liability exposure of law enforcement agencies	(3-10 Range) 6.5 years	(10% - 50%) 0%	(20% - 100%) 44%		(-3 to +8) +4.4
9	Hiring & Retention	Law enforcement candidate selection screening is hampered by legislation imposing further restrictions	(1 - 5 Range) 3.6 years	(10% - 60%) 33%	(30% - 100%) 58%	(-6 to +3) -3.0	
10	Reduction	Governments decide to reduce law enforcement services and actions in areas of high civil liability exposure (i.e. vehicle pursuits almost totally eliminated)	(1 - 8 Range) 2.4 years	(20% - 90%) 62%	(35% - 95%) 73%		(+2 to +9) +6.3
11	Training	State mandates retraining of peace officers identified as liability prone in the areas of officer involved traffic collisions, UOF, and pursuits	(3 - 5 Range) 3.8 years	(20% - 60%) 39%	(30% - 100%) 58%		(-1 to +3) +2.0
12	Miscellaneous	In 1999, large numbers of crack, nutrient starved and alcohol syndrome babies become psychologically unbalanced teenagers; social/civil unrest between haves and have nots occurs; society condones excessive force	(5-10 Range) 7.0 years	(0% - 60%) 0%	(10% - 90%) 54%		(-2 to +5) +2.3
13	Discipline	Legislation provides for public disclosure of peace officers' personnel and discipline records	(2 - 9 Range) 5.0 years	(5% - 50%) 27%	(10% - 90%) 52%	(-5 to +1) -2.0	
14	UOF	A significant, non-lethal weapon is developed and implemented to give peace officers more alternatives in UOF situations where lethal force is currently employed	(1-10 Range) 4.2 years	(5% - 70%) 40%	(15% - 100%) 60%		(-5 to +10) +5.0

### Cross Impact Analysis

Events may happen individually, yet they will affect other events if they occur. Scott Berry, Paul Stotesbury, and James Williams (Command College Class 18)<sup>31</sup> assisted the author in a time consuming analysis of each of the fourteen events to determine the impact of each event's occurrence on the probability of each of the other events occurring. For example, if Event #13 had a 50% likelihood of occurring and its occurrence would decrease Event #5's likelihood of occurring (predicted actual change) by 4%, then the overall effect of Event #1 on Event #5 is -2% (50% of 4%). One hundred and eighty-two individual judgments were made, with each expressed as a percentage. To aid in the analysis, each percentage was entered into cross impact analysis computer spreadsheet (See Cross Impact Analysis Matrix on next page and as Addendum #4) specially created for this purpose to do the computations. The likelihood and effect of other events occurring caused nine events' own likelihood of occurrence to increase (five were significant increases), two events stayed the same, and three events decreased.

Because the forecast trends and trend changes would be made up of many events, it would be almost impossible to subject large numbers of trends or changes to trends to a cross impact analysis. As such, every effort was made during the analysis of their probability and impact on the issue to consider the likelihood of concurrent changing trends.

**Event - Cross Impact Analysis Matrix (14 Events)**

Initial Probability of the Event (As a Percentage)	The Predicted Actual Change ( $\Delta$ ) and the Probable Actual Change ( $x P7$ ) to the Probability of the Event in the Left Column Occurring, Caused by the Event Below Occurring														Final Probability of the Event (As a Percentage)	
	Event #1	Event #2	Event #3	Event #4	Event #5	Event #6	Event #7	Event #8	Event #9	Event #10	Event #11	Event #12	Event #13	Event #14		
	$\Delta$	$\Delta$	$\Delta$	$\Delta$	$\Delta$	$\Delta$	$\Delta$	$\Delta$	$\Delta$	$\Delta$	$\Delta$	$\Delta$	$\Delta$	$\Delta$		$\Delta$
Event #1		$\Delta$ 6%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 3%	$\Delta$ -2%	$\Delta$ 12%	$\Delta$ -6%	$\Delta$ 4%	$\Delta$ -4%	$\Delta$ 3%	$\Delta$ 2%	$\Delta$ 7%	$\Delta$ -6%	Event #1 = 72%
P1= 61%		$x P2=$ 3%	$x P3=$ 0%	$x P4=$ 0%	$x P5=$ 2%	$x P6=$ -1%	$x P7=$ 9%	$x P8=$ -3%	$x P9=$ 2%	$x P10=$ -3%	$x P11=$ 2%	$x P12=$ 1%	$x P13=$ 4%	$x P14=$ -5%		
Event #2	$\Delta$ 10%		$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ -7%	$\Delta$ 7%	$\Delta$ -13%	$\Delta$ 3%	$\Delta$ -4%	$\Delta$ -6%	$\Delta$ 2%	$\Delta$ 6%	$\Delta$ -5%		Event #2 = 52%
P2= 56%	$x P1=$ 6%		$x P3=$ 0%	$x P4=$ 0%	$x P5=$ 0%	$x P6=$ -5%	$x P7=$ 5%	$x P8=$ -6%	$x P9=$ 2%	$x P10=$ -3%	$x P11=$ -3%	$x P12=$ 1%	$x P13=$ 3%	$x P14=$ -4%		
Event #3	$\Delta$ 13%	$\Delta$ -3%		$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ -3%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	Event #3 = 79%
P3= 74%	$x P1=$ 8%	$x P2=$ -2%		$x P4=$ 0%	$x P5=$ 0%	$x P6=$ 0%	$x P7=$ 0%	$x P8=$ -1%	$x P9=$ 0%	$x P10=$ 0%	$x P11=$ 0%	$x P12=$ 0%	$x P13=$ 0%	$x P14=$ 0%		
Event #4	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%		$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	Event #4 = 63%
P4= 63%	$x P1=$ 0%	$x P2=$ 0%	$x P3=$ 0%		$x P5=$ 0%	$x P6=$ 0%	$x P7=$ 0%	$x P8=$ 0%	$x P9=$ 0%	$x P10=$ 0%	$x P11=$ 0%	$x P12=$ 0%	$x P13=$ 0%	$x P14=$ 0%		
Event #5	$\Delta$ 5%	$\Delta$ -6%	$\Delta$ -2%		$\Delta$ 0%	$\Delta$ -1%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 4%	$\Delta$ -2%	$\Delta$ -5%	$\Delta$ 0%	$\Delta$ -4%	$\Delta$ 0%		Event #5 = 58%
P5= 65%	$x P1=$ 3%	$x P2=$ -3%	$x P3=$ -1%		$x P5=$ 0%	$x P6=$ -1%	$x P7=$ 0%	$x P8=$ 0%	$x P9=$ 2%	$x P10=$ -1%	$x P11=$ -3%	$x P12=$ 0%	$x P13=$ -2%	$x P14=$ 0%		
Event #6	$\Delta$ 0%	$\Delta$ -21%	$\Delta$ 0%		$\Delta$ 0%	$\Delta$ 0%	$\Delta$ -6%	$\Delta$ 5%	$\Delta$ 3%	$\Delta$ 0%	$\Delta$ 7%	$\Delta$ 0%	$\Delta$ 6%	$\Delta$ 6%		Event #6 = 64%
P6= 65%	$x P1=$ 0%	$x P2=$ -12%	$x P3=$ 0%		$x P5=$ 0%	$x P7=$ -4%	$x P8=$ 2%	$x P9=$ 2%	$x P10=$ 0%	$x P11=$ 4%	$x P12=$ 0%	$x P13=$ 3%	$x P14=$ 5%			
Event #7	$\Delta$ 14%	$\Delta$ 10%	$\Delta$ 2%		$\Delta$ -2%	$\Delta$ 3%	$\Delta$ -3%		$\Delta$ 6%	$\Delta$ 4%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 10%	$\Delta$ 6%		Event #7 = 100%
P7= 71%	$x P1=$ 9%	$x P2=$ 6%	$x P3=$ 1%		$x P5=$ 2%	$x P6=$ -2%		$x P8=$ 3%	$x P9=$ 2%	$x P10=$ 0%	$x P11=$ 0%	$x P12=$ 0%	$x P13=$ 5%	$x P14=$ 5%		
Event #8	$\Delta$ 4%	$\Delta$ 10%	$\Delta$ 3%		$\Delta$ 0%	$\Delta$ -4%	$\Delta$ 8%	$\Delta$ 8%		$\Delta$ 5%	$\Delta$ 4%	$\Delta$ 8%	$\Delta$ 0%	$\Delta$ 5%	$\Delta$ 0%	Event #8 = 75%
P8= 44%	$x P1=$ 2%	$x P2=$ 6%	$x P3=$ 2%		$x P5=$ -3%	$x P6=$ 3%	$x P7=$ 6%		$x P9=$ 3%	$x P10=$ 3%	$x P11=$ 5%	$x P12=$ 0%	$x P13=$ 3%	$x P14=$ 0%		
Event #9	$\Delta$ 7%	$\Delta$ 5%	$\Delta$ 0%		$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%		$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	Event #9 = 60%
P9= 53%	$x P1=$ 4%	$x P2=$ 3%	$x P3=$ 0%		$x P5=$ 0%	$x P6=$ 0%	$x P7=$ 0%	$x P8=$ 0%		$x P10=$ 0%	$x P11=$ 0%	$x P12=$ 0%	$x P13=$ 0%	$x P14=$ 0%		
Event #10	$\Delta$ 7%	$\Delta$ 8%	$\Delta$ 8%		$\Delta$ 5%	$\Delta$ 0%	$\Delta$ 4%	$\Delta$ -5%	$\Delta$ 8%		$\Delta$ -6%	$\Delta$ 0%	$\Delta$ 1%	$\Delta$ -4%		Event #10 = 90%
P10= 79%	$x P1=$ 4%	$x P2=$ 4%	$x P3=$ 6%		$x P5=$ 3%	$x P6=$ 0%	$x P7=$ 3%	$x P8=$ -2%	$x P9=$ 4%		$x P11=$ -3%	$x P12=$ 0%	$x P13=$ 1%	$x P14=$ -3%		
Event #11	$\Delta$ 9%	$\Delta$ 12%	$\Delta$ 5%		$\Delta$ 5%	$\Delta$ 0%	$\Delta$ 13%	$\Delta$ 4%	$\Delta$ 13%	$\Delta$ -2%		$\Delta$ 1%	$\Delta$ 0%	$\Delta$ 4%		Event #11 = 98%
P11= 58%	$x P1=$ 5%	$x P2=$ 7%	$x P3=$ 4%		$x P5=$ 4%	$x P6=$ 0%	$x P7=$ 9%	$x P8=$ 2%	$x P9=$ 7%	$x P10=$ -1%		$x P12=$ 1%	$x P13=$ 0%	$x P14=$ 3%		
Event #12	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%		$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 1%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%		$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 0%	Event #12 = 54%
P12= 54%	$x P1=$ 0%	$x P2=$ 0%	$x P3=$ 0%		$x P5=$ 0%	$x P6=$ 0%	$x P7=$ 0%	$x P8=$ 0%	$x P9=$ 0%	$x P10=$ 0%	$x P11=$ 0%		$x P13=$ 0%	$x P14=$ 0%		
Event #13	$\Delta$ 14%	$\Delta$ 0%	$\Delta$ 0%		$\Delta$ 4%	$\Delta$ 12%	$\Delta$ 4%	$\Delta$ 3%	$\Delta$ 4%	$\Delta$ 0%	$\Delta$ 6%	$\Delta$ 0%		$\Delta$ 6%		Event #13 = 83%
P13= 30%	$x P1=$ 9%	$x P2=$ 0%	$x P3=$ 0%		$x P5=$ 3%	$x P6=$ 8%	$x P7=$ 3%	$x P8=$ 1%	$x P9=$ 2%	$x P10=$ 0%	$x P11=$ 3%	$x P12=$ 0%		$x P14=$ 5%		
Event #14	$\Delta$ 4%	$\Delta$ 8%	$\Delta$ 4%		$\Delta$ 4%	$\Delta$ 2%	$\Delta$ 0%	$\Delta$ 0%	$\Delta$ 2%	$\Delta$ 3%	$\Delta$ 4%	$\Delta$ 2%	$\Delta$ 0%			Event #14 = 100%
P14= 76%	$x P1=$ 2%	$x P2=$ 4%	$x P3=$ 3%		$x P5=$ 3%	$x P6=$ 1%	$x P7=$ 0%	$x P8=$ 0%	$x P9=$ 1%	$x P10=$ 6%	$x P11=$ 2%	$x P12=$ 1%	$x P13=$ 0%			

**MODIFIED POLICY DELPHI**

A third group dynamics evaluation involved a Modified Policy Delphi analysis by nine lieutenants and captains attending Command College Class 18 on July 23, 1993. The sixteen master trends synthesized from the chief and sheriff questionnaires were evaluated by each member in an attempt to consolidate trends and reduce their number. This could not be accomplished as no consensus could be reached. The nine members then evaluated each trend for past (-5 years), near future (+5 years) and long term future (+10 years) probabilities using the form provided. In other words, the strength or weakness of each trend was estimated for what it has been to what it is going to be. The Trend Evaluation Form used, together with mean values, appears below (See Addendum #5 for charts and graphs).

Number	Area	Trend Statements Derived from Questionnaires (Modified Policy Delphi) (Mean Results Displayed in Bold)	-5 years	1993	+ 5 years	+10 years
1	Citizen Review	The effect of societal expectations of law enforcement competency and accountability on citizen personnel complaint levels and on pressure for civilian review boards	<b>68</b>	100	138	156
2	Courts	Court decisions which place additional responsibilities and liability on law enforcement agencies (including a shift to criminal courts)	<b>65</b>	100	132	153
3	Discipline	Additions to peace officer rights and court decisions which increase the level of difficulty to discipline or discharge a peace officer; disciplinary discharges and penalties overturned by courts	<b>82</b>	100	113	115
4	Effect	Law enforcement officers, feeling the negative effect of public opinion, being fearful of taking proactive or aggressive police action	<b>69</b>	100	111	116
5	Evidence	Peace officers must not just take the correct actions; they must be able to prove they did	<b>76</b>	100	121	144
6	Exposure	Liability levels and erosion of defenses based on exposure due to high risk police tasks (e.g., K-9, pursuits, shootings, SWAT, UOF)	<b>76</b>	100	133	158
7	Identification	Identification of liability prone officers through various means (EWS, complaints, pursuits, audits, reviews, observation, psychology, etc.)	<b>81</b>	100	132	155
8	Laws	Legislation to modify civil litigation to restrict lawsuits and cap awards	<b>81</b>	100	129	148
9	Lawsuits & Claims	Number and level of awards and settlements in law enforcement liability claims and lawsuits	<b>75</b>	100	132	149
10	Reduction	Law enforcement agencies involved in creative (e.g., improvement contracts) and proactive (e.g., EWS) methods to reduce liability exposure	<b>76</b>	100	130	154
11	Remediation	Efforts to retrain/modify/eliminate identified liability prone officers	<b>68</b>	100	135	166
12	Service-Budget	Law enforcement resources available for proactive service and liability reductions in light of budget reductions	<b>106</b>	100	98	111
13	Service-Type	Peace officers in the non-traditional role (i.e., C.O.P.) as problem solver (versus the role as enforcer)	<b>64</b>	100	133	160
14	Sex	Sexual harassment in the law enforcement working environment as a source of civil liability	<b>63</b>	100	136	150
15	Standards-Citizen	Public demand for accountability in all areas of law enforcement	<b>80</b>	100	132	146
16	Training	Training for peace officers in critical areas of civil liability	<b>72</b>	100	133	151



## FINDINGS

A detailed analysis of each trend, forecast trend change and forecast event is contained in Addenda #5, #2, and #3. From the three different sources (interviews, questionnaires, group dynamics), the author synthesized from current trends that:

- \* Legislation modifying civil liability litigation and awards is increasing at the same time the number of settlements and amounts are increasing.
- \* Law enforcement agencies are increasingly taking measures to identify liability prone officers and to reduce exposure.
- \* Legislation, court decisions, and exposure are increasingly placing responsibility and liability on agencies and officers.
- \* Legislation and court decisions are adding to officer rights.
- \* Officers and agencies are fearful and cutting back in aggressive enforcement areas.
- \* Sexual harassment is a significant liability exposure in law enforcement.
- \* Officers and agencies are not trusted to the degree they formerly were.
- \* Citizen expectations of competency and accountability are causing complaints and pressure for citizen oversight.
- \* Officers are increasingly taking on problem solver roles.

Changes to current trends are foretold in the following areas,;however, the forecasts of the timing of the changes are not as definite as the forecasts of changes themselves:

- \* Economic and other pressures may cause some regionalization of law enforcement agencies, with the greatest likelihood beginning in 1997.
- \* Budget problems may force law enforcement agencies to curtail liability exposure reduction efforts starting after 1995, and they are very likely to curtail the efforts after 1998.

- \* Peace officer associations (POA's) and law enforcement attorneys may become more aggressive in their defense of officers and agencies, particularly after 1997.
- \* Law enforcement agencies may implement significant policy changes to forbid certain high liability enforcement actions.
- \* Law enforcement agencies will probably limit outside employment, particularly after 1997.
- \* Law enforcement's early warning systems (EWS), developed to identify liability prone officers, will be used within a few years by plaintiffs' attorneys in their lawsuits against law enforcement.
- \* Punitive awards against law enforcement administrators may become more common.
- \* Competent prosecutions of officers for violation of suspects' rights are likely, particularly after 1998.
- \* Law enforcement agencies in the future may have less flexibility in handling discipline, due in part to strong legal action by POA's.
- \* Within three to four years, there may be an increase in civilian monitoring of law enforcement operations and discipline.
- \* A significant amount of legislation will be forthcoming on civil liability, but it will confuse rather than settle the issue.
- \* The civil liability trend probably will begin to swing back starting after 1998.

Civil liability related events are forecast in the following areas:

- \* Liability for failure to identify, monitor and remediate liability prone officers.
- \* Early warning systems (EWS).
- \* Increases in liability for individual officers and reductions for agencies.
- \* Civil liability awards of such size as to cause bankruptcy.
- \* Budget difficulties to such a degree that liability exposure programs are reduced.
- \* Law enforcement agency reductions in high exposure services.

- \* Action taken against frivolous lawsuits.
- \* Increased rights for law enforcement applicants and increased rights for peace officers, both in those same areas in which law enforcement agencies are concentrating to deal with potential or actual liability prone officers.
- \* Release of peace officer personnel and discipline records.
- \* Mandated retraining and remedial action for identified liability prone officers.
- \* Increases in crime, violence and civil unrest caused by crack, nutrient starved and alcohol syndrome youths, and the effect on society.
- \* Development of non-lethal weapons.

## SCENARIOS

From the information learned, three scenarios were developed to demonstrate how the current trends, forecast trend changes and forecast events might impact the future. The scenarios were based and crafted out of primary trends, trend changes and events, and a certain amount of literary imagination. The three scenarios are unique in that they are all based on the same basic storyline which is developed in three very different ways. The first scenario, called an **Explorative** or Nominal Scenario, describes what might happen if the **current trends** simply continue unabated. In it, no meaningful effort exists to change the current trends which are primarily negative and adversely impacting both law enforcement and society. Trends are numbered (TX) to correspond to primary current trends listed on Page 26. Although the specifically forecast trend changes and events are not included in the first scenario, many events suggested during research were added to give the scenario realism.

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### A History of Civil Liability in California Law Enforcement

1994 through 2004

(An Explorative Scenario)

California law enforcement and its civil liability faced significant problems during the last ten years. In spite of efforts to the contrary, liability exposure<sup>(T6)</sup> and payments increased<sup>(T9)</sup>. The funding available to law enforcement to accomplish its goals was slightly restricted through 1999 and then increased slowly<sup>(T12)</sup>.

As we look back over the last ten years of California law enforcement history, most agencies began with tight budgets, while their communities were still demanding increased accountability and more and better service. In those areas, little has changed. Federal promises of thousands of extra officers, modern equipment, and added funding to reduce crime largely went unfulfilled due to partisan politics and other priorities. In most communities, citizens already feeling the

pinch of a tight economy were unwilling to vote for additional taxes. Still, in 1994, police and sheriff agencies started off better than other governmental entities which were facing large cutbacks in funding, personnel and services.

In 1994, law enforcement's exposure was primarily in four areas: specialized enforcement activities such as canine<sup>(T6)</sup>; use of force, including deadly force<sup>(T6)</sup>; vehicle pursuits<sup>(T6)</sup>; and internal discrimination and sexual harassment complaints<sup>(T14)</sup>. While there were seminars, training<sup>(T16)</sup> and some policy changes in these areas, these were implemented too late in some agencies and were insufficient to overcome built in inertia. Liability exposure increased. As a result, the number of claims and the amount of litigation continued to increase at about the same speed it had for the prior few years<sup>(T9)</sup>. There were some successes. In late 1994 and early 1995, carefully worked out settlements covering dozens of agencies settled internal complaints of lack of opportunity and advancement by Afro-American, Hispanic and female officers. The settlements followed the pattern set by the 1993 Hunter-LaLey<sup>32</sup> agreement in Los Angeles, with limited direct monetary awards, trust funds established for training, and specific methodologies established for selection and assignment.

### Exposure Reduction

Agencies attempted to reduce their exposure by changing the service they provided. The emphasis on the officer as a problem solver rather than an enforcer steadily increased<sup>(T13)</sup>. Unfortunately, the continuing budget difficulties in California governments prevented significant success in this method of exposure reduction. Deficits forced at least a partial return to the more efficient calls-for-service mode of policing in hard hit agencies<sup>(T12)</sup>. In some agencies, services were simply eliminated. For example, in May of 1996, the Ninth Circuit Court of Appeals in the Santiago case established handler responsibility for canine bite control. As a reaction, most agencies with canine units simply reduced them to include only bomb and narcotics dogs, eliminating the high liability search dogs altogether. While the need for search dogs was eliminated in 1999 when hand held infrared search units became available to augment the

airborne variety, the cost of the units meant that only a few agencies with federal grants were able to purchase them.

Other exposure reductions were handled through policy and procedure changes. Pursuits were the subject of mutual agreements between agencies, limiting and defining when one agency's units would take over or assist the units from another agency. By 1997, most agencies followed the lead of San Francisco Bay Area agencies (1995) in limiting traffic violation only pursuits to three minutes duration. In early 1997, the Commission on Peace Officer Standards and Training developed a model use of force policy. By 1999, virtually all law enforcement agencies had adopted the policy. The uniform, state-wide policy reduced claims filed and appears to be reducing both settlements and awards.

Exposure reduction was also attempted through the use of outside legal counsel, increased claims investigation, and improved administrative investigations. As with the officer as a problem solver mode, full implementation of these preventive measures was limited due to funding. They were, however, significant contributors toward exposure reduction.

### **Identifying Liability Prone Peace Officers**

The idea of identifying officers prone to be liabilities to themselves and their agencies became the panacea of the '90's<sup>(17)</sup>. Steadily increasing in numbers through the year 2004, all but the smallest of agencies were attempting to devise the perfect criteria, method, or system. While some agencies struck out on their own, others joined together to seek the ideal solution. What a majority of the agencies did not realize was that their efforts were not to be totally productive. Peace officer associations lobbied and, in November 1995, obtained limited safeguards for officers in the form of amendments to the Peace Officer Bill of Rights<sup>(13)</sup>. These safeguards specifically restricted agency actions based on profiling alone. While agencies rushed into implementing their systems, many spent much of their time in gathering information, on the mechanics of the system, and in attempting to discipline or terminate identified officers. This was costly, bad for agency reputation and officer morale, and largely ineffective. The more

progressive agencies used creative, innovative or proactive methods to deal with officers in a positive manner<sup>(T10&11)</sup> before a crisis struck. For these agencies, a great deal was accomplished toward the basic goal of identifying and doing something about liability prone officers.

### Legislation and the Courts

The California Legislature, too, was concerned by the rising costs associated with civil litigation involving law enforcement. Grass roots initiatives had already proven that if the legislature did not act, the people would. As they had earlier with Worker's Compensation laws and litigation, the lawmakers between 1995 and 2003 continually exacted multiple pieces of legislation to curb abuses in law enforcement liability cases, cap settlements and awards, and limit attorney fees<sup>(T8)</sup>. Without a coordinated approach, these actions simply resulted in more confusion in the law and a swing to the federal courts.

At the same time, court decisions increasingly were holding law enforcement agencies, managers and individual officers responsible for the acts of those officers<sup>(T2)</sup>. There was a slight shift of liability to the individual officer and to the law enforcement manager, and away from the governmental entity. The combination of the new laws and court decisions resulted in an increase in civil liability, not a decrease. The increased officer and manager liability resulted in personnel somewhat fearful of taking aggressive action<sup>(T4)</sup> and in severe morale problems, particularly in large agencies.

### The Community

Citizens reacted to crime increases, further Rodney King-type incidents, and continued, outlandish liability settlements and awards. Many had heightened expectations of police competency due to increased contacts with officers in problem solving roles<sup>(T1)</sup>. Citizen complaints state-wide, which had increased three fold in 1992 after the Rodney King incident, decreased in 1993 and 1994 only to increase again after the Jorge Ignacio Rodriguez jail murder in February 1995. Many of these complaints subsequently formed the basis for future claims and litigation. Severe citizen pressure was brought to bear in the three years after the Rodriguez

incident on local, county and state officials to make officers and agencies accountable for their actions<sup>(T15)</sup>, and to give citizens increased oversight of law enforcement operations and discipline<sup>(T1)</sup>.

**Exploratory Scenario Summary**

Law enforcement civil liability into the 21st century went unresolved. Efforts for years on all sides of the issue complicated it in the name of progress. Exposure is still high, while citizens are being served less. Liability prone officers still exist with little to be done about them, although they are probably better educated about what is right or wrong. Frivolous litigation still abounds. Claims filed, settlements made and awards granted are at all time highs.

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The second scenario, known as a **Hypothetical** Scenario, uses the same basic storyline found in the Explorative Scenario. The Hypothetical Scenario paints a different picture by adding many of the forecast, high probability Trend Changes and Events. These are allowed to occur without interference. That is, there are no real efforts made to counteract negative events or changes to trends. Because the existing trends were primarily undesirable and forecasts were predominantly gloomy, the future develops into a disaster for law enforcement, government, and society. Trend, trend change and event numbers refer to numbers found on Pages 26, 19, and 23, respectively.

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**A History of Civil Liability in California Law Enforcement**

**1994 through 2004**

**(A Hypothetical Scenario)**

California law enforcement and its civil liability faced significant problems during the last ten years. In spite of efforts to the contrary, liability exposure<sup>(T6)</sup> and settlements and awards



increased<sup>(T9)</sup> exponentially. The funding available to law enforcement to accomplish all goals was slightly restricted through 1999 and then increased slowly<sup>(T12)</sup>.

As we look back over the last ten years of California law enforcement history, most agencies began with tight budgets, while their communities were still demanding increased accountability and more and better service. In those areas, little has changed. Federal promises of thousands of extra officers, modern equipment, and added funding to reduce crime largely went unfulfilled due to partisan politics and other priorities. In most communities, citizens already feeling the pinch of a tight economy were unwilling to vote for additional taxes. Many small agencies simply disappeared. Others were swallowed into the regionalization effort, gaining stability and influence based on size<sup>(TC13)</sup>. Still, in 1994, police and sheriff agencies started off better than other governmental entities which were facing large cutbacks in funding, personnel and services.

In 1994, law enforcement's exposure was primarily in four areas: specialized enforcement activities such as canine<sup>(T6)</sup>; use of force including deadly force<sup>(T6)</sup>; vehicle pursuits<sup>(T6)</sup>; and internal discrimination and sexual harassment complaints<sup>(T14)</sup>. While there were seminars, training<sup>(T16)</sup> and some policy changes in these areas, these were implemented too late in some agencies and were insufficient to overcome built in inertia. Budget difficulties beginning in 1997 and 1998 severely limited training<sup>(TC1, E3)</sup>. Liability exposure increased. As a result, the number of claims and the amount of litigation continued to increase at about the same rate it had for the prior few years<sup>(T9)</sup>. There were few successes.

### Exposure Reduction

Agencies attempted to reduce their exposure by changing the service they provided. The emphasis on the officer as a problem solver rather than an enforcer steadily increased<sup>(T13)</sup>. Unfortunately, the continuing budget difficulties in California governments prevented significant success in this method of exposure reduction. Deficits forced at least a partial return to the more efficient, but not necessarily effective, calls-for-service mode of policing in hard hit agencies<sup>(T12, TC14)</sup>. In some agencies, services were simply eliminated or actions were forbidden<sup>(TC5)</sup>. For

example, in May of 1996, the Ninth Circuit Court of Appeals in the Santiago case established handler responsibility for canine bite control. As a reaction, most agencies with canine units simply reduced them to include only bomb and narcotics dogs, eliminating the high liability search dogs altogether. While the need for search dogs was eliminated in 1999 when hand held infrared search units became available to augment the airborne variety, the cost of the units meant that only a few agencies with federal grants were able to purchase them. Another area of forbidden action was off-duty employment. Between 1995 and 1998, security type assignments such as sport venues became on-duty activities, and all other security work was forbidden<sup>(TC8)</sup>. Other examples of service reductions or forbidden actions were: San Francisco's disbanding of its narcotics street enforcement unit in 1997; Oakland's prohibition of nighttime warrant service in 1998; Sacramento's disbanding of its SWAT unit in 2000, and Los Angeles' doing away with saps, batons and metal flashlights in 2001<sup>(E10)</sup>.

Other exposure reductions were handled through training and through policy and procedure changes. In 1998, the state through the Commission on Peace Officer Standards and Training (POST) mandated retraining of all officers identified as liability prone in the areas of officer-involved traffic collisions, use of force, and pursuits<sup>(E11)</sup>. By 1999, few agencies allowed pursuits for other than provable, violent felony crimes<sup>(TC5, E10)</sup>.

In early 1997, The Commission on Peace Officer Standards and Training (POST) developed a model use of force policy. By 1999, virtually all law enforcement agencies had adopted the policy. The uniform, state-wide policy reduced claims filed and, as of this date, has reduced both settlements and awards. Just as important, if not more so, was the 1999 development of the "Buck Rogers" stun gun. Capable of totally but temporarily incapacitating a person from a distance of over 100 feet without side effects, it had the potential of virtually replacing the firearm<sup>(E14)</sup>. Unfortunately, legal haggling, licensing problems and lack of financial backing have prevented its deployment except on a continuing test basis.

Exposure reduction was also attempted through the use of outside legal counsel, increased claims investigation, and improved administrative investigations. As with the officer as a

problem solver mode, only limited implementation of these preventive measures was possible because of sparse funding between 1994 and 1997. Though they were significant contributors toward exposure reduction, the major funding difficulties beginning in 1997 and 1998 caused virtually all agencies to severely limit these activities thereafter<sup>(TC1, E3)</sup>.

### **Identifying Liability Prone Peace Officers**

The idea of identifying officers or officer candidates prone to be liabilities to themselves and their agencies became the panacea of the '90's<sup>(T7)</sup>. There were slow but steady efforts through 1998, when in August a federal judge held the Bakersfield sheriff personally liable for \$50,000 and Bakersfield County liable for \$2.5 million for failure to identify and monitor<sup>(E1)</sup> deputies using excessive force. For the next three years, efforts were vastly increased. All but the smallest of agencies were attempting to devise the perfect criteria, method, or system. While some agencies struck out on their own, others joined together to seek the ideal solutions. Most medium to large agencies developed extensive psychological and other screening methods to evaluate candidates and automated Early Warning Systems (EWS) to track current officers.

What a majority of the agencies did not realize was that their efforts were not to be totally productive. Peace officer associations lobbied and, in November 1995, obtained limited safeguards for officers in the form of amendments to the Peace Officer Bill of Rights<sup>(T3)</sup>. These safeguards were significantly expanded in October 1998<sup>(TC11, E5)</sup>. The safeguards specifically restricted agency actions based on profiling or patterns of conduct. After several years of attempts, various civil rights organizations lobbied and got restrictions on applicant screening methods<sup>(E9)</sup> in January 2002.

While agencies rushed into implementing their Early Warning Systems, many spent most of their time in gathering information, on the mechanics of the system, and in attempting to discipline or terminate identified officers. This was costly, bad for agency reputation and officer morale, and largely ineffective. Worse, the very systems used by law enforcement agencies became conclusive evidence against them in court. In the landmark case of Struggs vs. County

of San Bernardino in June 1997, plaintiff attorneys used the county's own system to show that middle and upper managers knew which deputies were liability prone yet did nothing to protect the public<sup>(TC6, E7)</sup>.

### Legislation and the Courts

The California Legislature, too, was concerned by the rising costs associated with civil litigation involving law enforcement. Grass roots initiatives had already proven that if the legislature did not act, the people would. As they had earlier with Worker's Compensation laws and litigation, the lawmakers between 1995 and 2002 continually exacted legislation to curb abuses in law enforcement liability cases, cap settlements and awards, and limit attorney fees<sup>(T8)</sup>. Without a coordinated approach, these actions simply resulted in more confusion in the law<sup>(TC7)</sup> and a move to the federal courts. The change in the trend had, at least, begun<sup>(TC2)</sup>. It wasn't until January of 2004 that the legislature finally enacted a sweeping package of procedural and award capping laws<sup>(E8)</sup>. To that point, the only effective legislation was the large, fixed penalties for frivolous federal lawsuits<sup>(E4)</sup> enacted into law in the year 2000.

At the same time, court decisions increasingly were holding law enforcement agencies, managers and individual officers responsible for the acts of those officers<sup>(T2)</sup>. Early decisions caused a slight shift of liability to the individual officer and to the law enforcement manager, and away from the governmental entity. Beginning in early 1998, a significant increase in competent, versus political, prosecutions and convictions of peace officers occurred in both federal and state courts for violations of suspects' rights, primarily related to use of force<sup>(TC4)</sup>. These were followed in February 2001 by James vs City of San Diego which reassigned liability based on percentage of responsibility<sup>(E6)</sup>. This combination of new laws and court decisions resulted in a very large increase in personal civil and criminal liability and a slight decrease in governmental liability. The increased officer and manager liability resulted in personnel somewhat fearful of taking aggressive action<sup>(T4)</sup> and in severe morale problems, particularly in large agencies.

**The Community**

Citizens reacted to crime increases, further Rodney King-type incidents, and continued, outlandish liability settlements and awards. Many had heightened expectations of police competency due to increased contacts with officers in problem solving roles<sup>(T1)</sup>. Citizen complaints state-wide, which had increased three fold in 1992 after the Rodney King incident, decreased in 1993 and 1994 only to increase again after the Jorge Ignacio Rodriguez jail murder in February 1995. Many of these complaints subsequently formed the basis for future claims and litigation. Severe citizen pressure was brought to bear in the three years after the Rodriguez incident on local, county and state officials to make officers and agencies accountable for their actions<sup>(T15)</sup>, and to give citizens increased oversight of law enforcement operations and discipline<sup>(T1)</sup>. Also a result of intense citizen activity was the so called Gates Statute, enacted in December 2003 as an emergency measure. This statute provided for public disclosure of a large portion of a peace officer's personnel and disciplinary records via the Freedom of Information Act<sup>(E13)</sup>.

**Hypothetical Scenario Summary**

With several significant exceptions, law enforcement civil liability into the 21st Century, increased. Mandatory retraining and the slight shifting of liability away from government helped. Legislative efforts for years on competing sides of the issue simply provided a legislative basis for opposite interests, complicating the issue but solving little. Exposure is still very high, while citizens are being served less. Efforts to prevent future liability prone officers from entering law enforcement were stymied. Liability prone officers still exist with little to be done about them, although they are probably better educated about what is right or wrong and are very well known to both agencies and plaintiff attorneys alike. Frivolous litigation still abounds in state courts but has been severely limited in federal courts. Overall, claims filed, settlements made and awards granted are at all time highs in spite of reductions in certain areas.

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The last scenario, called a **Normative Scenario**, builds on the prior one. It combines the current trends and the most likely of the forecast Trend Changes and Events found in the Hypothetical Scenario, and adds some of the logical reactions to them by law enforcement, government and society. It is this scenario which makes one think. When trends change toward the negative or disastrous events occur, it is here that the best and brightest minds are required to overcome adversity. It is here that law enforcement managers try to mitigate a negative future with strategies, techniques, plans or changes and see why some might succeed where others might fail.

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**A History of Civil Liability in California Law Enforcement**

**1994 through 2004**

**(A Normative Scenario)**

California law enforcement and its civil liability faced significant problems during the last ten years. In spite of efforts to the contrary, liability exposure<sup>(T6)</sup> and settlements and awards increased<sup>(T9)</sup>. There were, however, successes by certain departments and in specific areas of exposure. The funding available to law enforcement to accomplish all goals was slightly restricted through 1999 and then increased slowly<sup>(T12)</sup>.

As we look back over the last ten years of California law enforcement history, most agencies began with tight budgets, while their communities were still demanding increased accountability and more and better service. In those areas, little has changed. Federal promises of thousands of extra officers, modern equipment, and added funding to reduce crime largely went unfulfilled due to partisan politics and other priorities. In most communities, citizens already feeling the pinch of a tight economy were unwilling to vote for additional taxes. Many small agencies simply disappeared. Others joined the regionalization effort, gaining stability and influence

based on size<sup>(TC13)</sup>. Still, in 1994, police and sheriff agencies started off better than other governmental entities which were facing large cutbacks in funding, personnel and services.

In 1994, law enforcement's exposure was primarily in four areas: specialized enforcement activities such as canine<sup>(T6)</sup>; use of force including deadly force<sup>(T6)</sup>; vehicle pursuits<sup>(T6)</sup>; and internal discrimination and sexual harassment complaints<sup>(T14)</sup>. There were seminars, training<sup>(T16)</sup> and some policy changes in these areas. Departments with forward thinking leaders began the work early, involving peace officer associations, citizens and academicians in their planning. Other departments were slow to realize the dangers, implementing their efforts too late or without officer understanding and concurrence. These efforts were insufficient to overcome built in inertia. Budget difficulties beginning in 1997 and 1998 severely limited training<sup>(TC1, E3)</sup>. Many departments were forced to seek outside training assistance to forestall exposure increases.

The number of claims and the amount of litigation leveled off, or even decreased, for some departments, while they continued to increase at about the same rate for others<sup>(T9)</sup>. There were some successes. In late 1994 and early 1995, carefully worked out settlements covering dozens of agencies settled internal complaints of lack of opportunity and advancement by minority and female officers. The settlements followed the pattern set by the 1993 Hunter-LaLey agreement in Los Angeles, with limited direct monetary awards, trust funds established for training, and specific methodologies established for selection and assignment.

### **Exposure Reduction**

Agencies attempted to reduce their exposure by changing the service they provided. The emphasis on the officer as a problem solver rather than an enforcer steadily increased<sup>(T13)</sup>. Unfortunately, the continuing budget difficulties in California governments prevented significant success in this method of exposure reduction. Deficits forced at least a partial return to the more efficient, but not necessarily effective, calls-for-service mode of policing in hard hit agencies<sup>(T12, TC14)</sup>. In some departments, services were simply eliminated or actions were forbidden<sup>(TC5)</sup>. For example, in May of 1996, the Ninth Circuit Court of Appeals in the Santiago case established

handler responsibility for canine bite control. As a reaction, many agencies with canine units simply reduced them to include only bomb and narcotics dogs, eliminating the high liability search dogs altogether. Other agencies switched from large, fierce looking search dogs to smaller dogs trained only to bark. They prove very effective. Although the need for search dogs was eliminated in 1999 when hand held infrared search units became available to augment the airborne variety, the cost of handheld units meant that only a few agencies with federal grants were able to purchase them. The use of small dogs was more cost effective.

Off-duty employment became a significant exposure. In January 1996, the Reddin Bill removed peace officer powers from all officers during the time they were working for other than their departments. In preparation, all former security type jobs such as sport venues or movie shooting locations became on-duty activities worked at overtime<sup>(TC8)</sup>. Security work as off-duty employment soon vanished. Other examples of service reductions or forbidden actions were: San Francisco's disbanding of its narcotics street-level enforcement unit in 1997 in favor of patrol enforcement; Oakland's 1998 prohibition of nighttime warrant service except by specially trained officers; Sacramento's disbanding of its SWAT unit in 2000 to use Sacramento County's unit; and Los Angeles' doing away with saps, batons and metal flashlights in 2001<sup>(E10)</sup>.

Other exposure reductions were handled through training and through policy and procedure changes. In 1998, the state, through the Commission on Peace Officer Standards and Training (POST), mandated retraining of all officers identified as liability prone in the areas of officer-involved traffic collisions, use of force, and pursuits<sup>(E11)</sup>. Pursuits themselves were the subject of mutual agreements between agencies, limiting and defining when one agency's units would take over or assist the units from another agency. By 1997, most agencies followed the lead of San Francisco Bay Area agencies (1995) in limiting traffic violation only pursuits to three minutes duration. Pursuits continued to be a high exposure even after the legislature passed Governor Kathleen Brown's Emergency Vehicle Liability Act (effective April 15, 1999). As a result, by late 1999 few agencies allowed pursuits for other than provable, violent felony



crimes<sup>(TC5, E10)</sup>. Of course, manufacturer installed vehicle transponders made identification and tracking of all vehicles made after 2000 simple and pursuits almost unnecessary.

In early 1997, POST developed a model use of force policy. By 1999, virtually all law enforcement agencies had adopted the policy. The uniform, state-wide policy reduced claims filed and, as of this date, has reduced both settlements and awards. Just as important, if not more so, was the 1999 development of the "Buck Rogers" stun gun. Capable of totally but temporarily incapacitating a person from a distance of over 100 feet without side effects, it virtually replaced the firearm by 2002<sup>(E14)</sup> with a concurrent reduction in use of deadly force complaints and investigations.

Exposure reduction was also attempted through the use of outside legal counsel, increased claims investigation, and improved administrative investigations. As with the officer as a problem solver mode, only limited implementation of these preventive measures was possible through 1997 due to funding. Though significant contributors toward exposure reduction, the major funding difficulties beginning in 1997 and 1998 caused virtually all agencies to severely limit these activities<sup>(TC1, E3)</sup>. At the same time, to compensate, peace officer associations, city attorneys and county counsels became much more aggressive in their defense of officers and departments<sup>(TC9)</sup>. This method had been used successfully in the City of Santa Barbara for almost a decade. It initially caused serious court backlogs but ultimately reduced claims and litigation.

### Identifying Liability Prone Peace Officers

The idea of identifying officers or officer candidates prone to be liabilities to themselves and their agencies became the panacea of the '90's<sup>(T7)</sup>. There were slow but steady efforts through 1998, when in August a federal judge held the Bakersfield sheriff personally liable for \$50,000 and Bakersfield County liable for \$2.5 million for failure to identify and monitor<sup>(E1)</sup> deputies using excessive force. For the next three years, efforts were vastly increased. All but the smallest of agencies were attempting to devise the perfect criteria, method, or system. POST's

efforts as a state-wide coordinator, together with input from peace officer associations, citizen interests groups and technical experts, proved invaluable both as a legislative basis and for techniques and systems. Small to large agencies benefited from uniform psychological and other screening methods to evaluate candidates and from manual and automated Early Warning Systems (EWS) to monitor current officers.

The efforts were not totally accepted. Some peace officer associations were still concerned about the potential for management abuse and lobbied to obtain safeguards for officers in the form of amendments to the Peace Officer Bill of Rights<sup>(T3)</sup>. These safeguards were implemented in November 1995. The safeguards prevent managers from going further than POST implemented programs and allow for judicial review. Fortunately, in spite of several years of attempts, initiatives supported by various civil rights organizations to impose restrictions on applicant screening methods<sup>(E9)</sup> were defeated. This defeat was primarily due to the widespread support for the POST formulated methods.

While agencies rushed into implementing their Early Warning Systems, some spent too much of their time in gathering information, on the mechanics of the system, and in attempting to discipline or terminate identified officers. They soon discovered this was costly, bad for agency reputation and officer morale, and largely ineffective. Most departments followed POST's suggestions to implement creative, innovative and/or proactive methods to deal with officers in a positive manner<sup>(T10&11)</sup> before a crisis struck. For these agencies, a great deal was accomplished toward the basic goal of identifying and doing something about liability prone officers. The systems were not without problems. The very systems used by law enforcement agencies could be used as conclusive evidence against them in court. In the landmark case of *Struggs vs. County of San Bernardino* in June 1997, plaintiff attorneys used the county's own system to show that middle and upper managers knew which deputies were liability prone yet did nothing to protect the public<sup>(TC6, E7)</sup>.

### Legislation and the Courts

The California Legislature, too, was concerned by the rising costs associated with civil litigation involving law enforcement. Grass roots initiatives had already proven that if the legislature did not act, the people would. As they had earlier with Worker's Compensation laws and litigation, the lawmakers between 1995 and 1999 continually exacted multiple pieces of legislation to curb abuses in law enforcement liability cases, cap settlements and awards, and limit attorney fees<sup>(T8)</sup>. Without a coordinated approach, these actions simply resulted in more confusion in the law<sup>(TC7)</sup> and a move to the federal courts. The change in the trend had, at least, begun<sup>(TC2)</sup>. Led by the California League of Cities, the California Peace Officers Association and similar groups lobbying for real progress, the legislature in 2000 finally enacted a sweeping package of procedural and award capping laws<sup>(E8)</sup>.

At the same time, court decisions increasingly were holding law enforcement agencies, managers and individual officers responsible for the acts of those officers<sup>(T2)</sup>. Early decisions caused a slight shift of liability to the individual officer and to the law enforcement manager, and away from the governmental entity. Beginning in early 1998, a significant increase in competent, versus political, prosecutions and convictions of peace officers occurred in both federal and state courts for violations of suspects' rights, primarily related to use of force<sup>(TC4)</sup>. These were followed in February 2001 by James vs City of San Diego which reassigned liability based on percentage of responsibility<sup>(E6)</sup>. This combination of new laws and court decisions resulted in a very large increase in personal civil and criminal liability and a slight decrease in governmental liability. The increased officer and manager liability resulted in personnel somewhat fearful of taking aggressive action<sup>(T4)</sup> and in severe morale problems, particularly in large agencies.

### The Community

Citizens reacted to crime increases, further Rodney King-type incidents, and continued, outlandish liability settlements and awards. Many had heightened expectations of police

competency due to increased contacts with officers in problem solving roles<sup>(T1)</sup>. Citizen complaints state-wide, which had increased three fold in 1992 after the Rodney King incident, decreased in 1993 and 1994 only to increase again after the Jorge Ignacio Rodriguez jail murder in February 1995. Many of these complaints subsequently formed the basis for future claims and litigation. Severe citizen pressure was brought to bear in the three years after the Rodriguez incident on local, county and state officials to make officers and agencies accountable for their actions<sup>(T15)</sup>, and to give citizens increased oversight of law enforcement operations and discipline<sup>(T1)</sup>. Also a result of intense citizen activity was the so called Gates Statute, enacted in December 2003 as an emergency measure. This statute provided for public disclosure of a large portion of a peace officer's personnel and disciplinary records via the Freedom of Information Act<sup>(E13)</sup>.

**Normative Scenario Summary**

Law enforcement civil liability into the 21st Century has been somewhat abated through improved law enforcement practices and legislation. Mandatory training and retraining, effective pre-employment screening, careful monitoring for errant officers, the deployment of a new non-lethal weapon, and the shifting of liability away from government all helped. Legislative efforts, ineffective for years, finally simplified and controlled much of the liability issue. Exposure is still high, but it is better placed and appropriately limited. Liability prone candidates and officers still exist, but departments are better equipped to deal with the problems they create. Claims filed, settlements made and awards granted have leveled off and are beginning to diminish.

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Hundreds of scenarios could be written of each type. There is an advantage in doing just that. Each variation unfolds a different set of circumstances and requires different actions and attitudes from its participants. Each forces the writer or reader to be challenged and react. The scenarios may be thought of as practice exercises, preparing for the future. The information

learned may set in motion certain preparations to make it easier to counteract anticipated future difficulties, or it may simply prepare one to act when a difficulty occurs.

In the three scenarios, the reader can observe the following:

- \* The area of civil liability and exposure is increasingly damaging law enforcement financially, in resources and in the eyes of the public.
- \* It is likely that this trend will continue, and may get worse, unless acted upon.
- \* There are three basic methods of dealing with the problem: exposure reduction, prevention, and alterations to the current legal basis for claims and lawsuits. Actions in all three areas are necessary.
- \* Unilateral action may reduce some problems, but a multiple stakeholder, multiple area approach is required for meaningful success.
- \* Some agencies have taken very positive steps to ensure exposure reduction and prevention. Some have aggressively used existing legal means to curtail legal actions taken against them.
- \* In many agencies, chiefs and sheriffs are aware of at least the negative potential of civil liability, but other more current and pressing problems are taking up their time, energies and resources. In these agencies, much of the action taken in exposure reduction or in prevention is ineffectual.
- \* If widespread, effective action is not taken, governments and/or citizen groups will take actions in one or more of the three areas. These actions will probably not follow the desires of law enforcement.

### CONCLUSIONS TO BE DRAWN FROM THESE SCENARIOS

Law enforcement civil liability is a complicated subject crossing many disciplines. The consequences are enormous, and the number of stakeholders is almost as large. No attempt has been made here at an in-depth evaluation of identification methods, exposure reduction efforts, reactive and proactive ways of dealing with identified officers, or the multiple influences a

community may have on its agency. Instead, what has been demonstrated is that an issue of extreme proportions exists, a multitude of options in dealing with the problem exists, what many of those options are, that some are very inventive and better than others, and that some agencies have already started to use various options.

In considering the future of California law enforcement, for there to be a future, someone or something must be in control. To wait is to court disaster and to give up control to the very persons and entities least likely to provide for law enforcement's mutual best interests and those of the citizens law enforcement serves. Preparation and action must be taken now. Many within law enforcement and within government have tried to signal the alert that the problem is here now. Too many of the upper managers and leaders are busy with other priorities, and they are not listening.

## **STRATEGIC ANALYSIS - THE STATE OF CALIFORNIA**

To ensure that the Normative Scenario, or one similar to it, reflects the future, law enforcement civil liability and exposure on a state-wide approach within the State of California must be examined. To provide a framework, a mission statement and objectives were drawn from the issue and sub issues. These will form the basis upon which to make a strategic analysis of the environment, the organizations and the stakeholders within the State. For the purposes of a strategic analysis, all peace officer law enforcement agencies within the State will be considered, however, concentration will be on municipal police departments, county sheriff departments, and the California Highway Patrol.

### **Mission Statement**

**The mission is to reduce the level of civil liability of law enforcement agencies caused by peace officers who could be identified in advance as significant civil liabilities.**

### **Objective #1**

Determine how peace officers in the future can be identified as significant civil liabilities by examining the following areas:

- A. Pre-employment and on-the-job psychological testing.
- B. Feedback sources of information.
- C. Early Warning Systems (EWS).

### **Objective #2**

Determine how law enforcement agencies can adapt to the legal limitations on the actions which can be taken toward the identified officers by examining those limitations, current practice, and future options.

### Objective #3

Determine what actions and alternatives agencies can adopt in the future to reduce the civil liabilities caused by the officers.

To conduct an Environmental Analysis, an Organizational Analysis, and a Stakeholder Analysis, a WOTS-UP Analysis<sup>33</sup> (for the Environmental and Organizational Analyses) and a SAST Analysis<sup>34</sup> (for the Stakeholder Analysis) were used. The author conducted personal interviews to assess the law enforcement environment, organizations, and stakeholders with the following: Lieutenant Tim Halford, Commanding Officer, Legal Affairs Division, Los Angeles Police Department; Gordon W. Trask, Principal Deputy County Counsel, County of Los Angeles; William U. McCormack, Special Agent, Legal Instruction Unit, Federal Bureau of Investigation Academy (Quantico, Virginia); Deputy City Attorney Richard James, Civil Liability Specialist, Los Angeles City Attorney's Office; and Sergeant Gordon Graham, Civil Liability Specialist and Law Enforcement Guest Lecturer, California Highway Patrol. Information gained from other sources (i.e., returned plaintiff attorney questionnaires, conversations with virtually all members of the Command College Class 18) was also included in the analyses by the author.

### ENVIRONMENTAL ANALYSIS

To compare areas in the broadest sense which might support or threaten the mission, the environment within which law enforcement operates in the State of California was examined.

#### Opportunities

The two largest areas of support for the mission present within the State are in the fiscal and community areas. Virtually all governmental entities within the State are having financial crises. The threat of multiple and/or massive liability pay outs is enough to cause a panic in any politician or government manager. The worker's compensation liability area has already proven a disaster to business in the State. The recent steep rise of police and sheriff liability cases, and



concurrent high settlements and awards, is bringing the law enforcement liability issue to the forefront of the State Legislature. Many elected officials see procedural limiting or liability capping as an instant fix. A red flag in this arena is that too many politicians and lobbyists have different views of the legislative answer.

Public support of law enforcement is vital. Current public opinion of California law enforcement varies greatly based on many factors. On the liability question, the public is divided into three camps, depending on the issue:

- \* Virtually all of the public sectors would support internal agency actions which limit needless liability exposure.
- \* Most of the public would support pre-employment and in-service identification of liability prone officers and appropriate action. The "how" of identification and the "what" of action have the potential to significantly separate sectors of the public.
- \* Limited sectors would support specific liability limiting efforts, such as termination based on liability or eliminating certain police activities (pursuits, deadly force, K-9, etc.).

Other areas which offer support are:

Automation - Agencies can use computer based technology to identify and track liability issues, incidents and officers.

Awards and Settlements - The very knowledge of high pay outs which appear disproportionate to the claimed incident angers at least a portion of the public.

Backlash - Plaintiffs' attorneys who file frivolous lawsuits, wasting precious government dollars, may anger the public.

Government Associations - Associations of cities and/or counties, or of their city managers and/or chief administrative officers, are powerful forces for change. Through policy or influence in Sacramento, these groups can alter many areas within a law enforcement agency. With the adverse effect of civil liability upon governments, these groups are well motivated for change. There is a potential danger of them taking actions adverse to law enforcement interests in the name of liability reduction.

Plaintiff Attorneys - Changes to reduce law enforcement liability through exposure reduction and prevention would probably be supported by plaintiff attorneys (the degree is subject to question, as the attorneys' livelihood is based upon the existence of the liability).

Special Interest Groups:

Ethnic Based Politics - Depending on the issue and the political inclination, an ethnic based group may support a liability reduction effort.

Ideological Based Groups - There are increasing numbers of support/action groups which work within specific communities. Depending upon the group and the topic, they may support a law enforcement liability issue.

Threats

There are numerous environmental factors which are threats to the mission. In fact, because of the controversial nature of some of the issues, some factors may support one issue while opposing another, or may oppose an issue because it does not go far enough.

The threat factors fall into multiple categories:

Automation - Agencies can use computers to identify and track liability issues, incidents and officers. Plaintiffs' attorneys can use the same technology and data to track liability issues, incidents, and officers, and to develop litigation.

Awards and Settlements - The knowledge that certain events, which are the basis for lawsuit claims, actually occurred angers at least a portion the public.

Barriers - With the increased diversity of the populace comes the threat of differences or misunderstandings due to culture, religion, or language.

Community Groups - While many, perhaps most, community groups would support liability reduction, some groups have their own idea or direction they want reduction to take. Efforts in other areas might be opposed. For example, an effort to increase the use of non-lethal or less-lethal weapons might be opposed by a community group which believes that all weapons are used too much or are used disproportionately against members of their community.

Courts - Court decisions have been expanding liability, placing more emphasis on supervision and management.

Contacts:

Crime - As negative officer-suspect contacts increase due to violent crimes, gangs and drugs, the probability for high liability incidents increases.

Unemployment - As increased numbers of people are unemployed, the potential for added negative contacts increases.

Economic - Many of the potential solutions either cost money, reduce services or adversely affect some interest group financially. For example, improving law enforcement training is very expensive, both in presenting the training and in taking officers away from their jobs to attend the training. Limiting award amounts not only affects the plaintiffs, it affects the plaintiffs' attorneys who are a potent voice in Sacramento. Eliminating law enforcement services which are high in liability exposure, such as serving search warrants at drug sales locations, adversely affects others, such as those who live near the drug sales locations.

Hiring Restrictions - There are many restrictions and limitations placed on agencies covering hiring practices. Most are in place to ensure equal employment opportunities or prevent consideration of information believed to be non-related to the employment. Some are in place because of legal decisions or settlements. These restrictions and limitations may adversely affect pre-employment methods or techniques used to screen out officer candidates who would be high liability officers.<sup>35</sup>

Inertia - Change is not a popular word to some persons in law enforcement. Many peace officers are quite comfortable with their current policies, practices and methods. In fact, there are those who say that law enforcement is yet being drawn into the twentieth century kicking and screaming. Resistance to change, especially those changes needed to reduce liability, could be high and would likely vary by agency.

Privacy - In spite of existing laws and labor legislation which increase peace officer rights, courts continue to open personnel and disciplinary files, providing an expanded basis for liability litigation.

Plaintiff Attorneys - Any effort to reduce liability through alterations to the current legal basis for claims and lawsuits or through liability limits would be opposed because such an effort would adversely affect plaintiff attorneys and their clients. Such groups as the Trial Lawyers Association and the Police Abuse Coalition (which appears to be more of a lawyer referral service) would be at the forefront.

Special Interest Groups:

Ethnic Based Politics - Depending on the issue and the political inclination, an ethnic based group may hinder a liability reduction effort.

Ideological Based Groups - There are increasing numbers of support/action groups which work within specific communities. Depending upon the group and the topic, they may oppose a law enforcement liability issue.

## ORGANIZATIONAL ANALYSIS

To examine the capabilities of State-wide law enforcement to achieve the mission, an organizational analysis was conducted of peace officer law enforcement in general within the State of California. Emphasis was placed on agencies in the medium to large range (50+ sworn officers).

### Strengths

Law enforcement is highly motivated to lessen its civil liability. Either directly or indirectly, the costs of settlements and awards, legal fees, and psychological damage to the officer or agency adversely affect each agency's ability to operate and accomplish its mission. Additionally, when settlements or awards are just and based on improper conduct, law enforcement has a strong desire to clean up its own act.

The personnel resources of law enforcement agencies are capable of lessening their civil liability. For the most part, peace officers are well educated, well trained, and not so entrenched that change cannot be accomplished. In fact, continuous change in multiple areas has been a hallmark in some law enforcement agencies in recent years.

The structure of law enforcement agencies and the environment in which they operate lend themselves to change from the top down. Still somewhat para-military in their chain-of-command style, peace officers are used to following orders. Laws and case decisions are second nature to peace officers who must be guided by them in their daily work.

Law enforcement has many associations which would assist in implementing liability reduction both as a benefit to their members as well as a benefit to law enforcement's reputation and stature. Command and staff associations would fight for liability reduction to improve public image and to save law enforcement command staff from the application of Monell<sup>36</sup>. State-wide associations of specialized natures (i.e., burglary investigators, latent print experts, crime prevention) exist which would fight to reduce liability to their members. Peace officer associations, as labor organizations with a strong lobby in Sacramento, would fight to reduce liability. Each of these associations, however, has a black side. Each would have reason to oppose certain liability reduction efforts depending on what it was.

Training in the law enforcement area is strong. The Commission on Peace Officer Standards and Training (POST) mandates, develops, standardizes and puts on training state-wide. Other state-wide or regional organizations and individual agencies put on training which is attended by personnel from multiple agencies. In many cases, local colleges are involved in peace officer training from basic training through upper management courses.

### Weaknesses

California peace officers as individuals have gone through some difficult times in recent years. Morale could be higher; public confidence could be higher; pay could be higher. Rank and file officers do not believe that their leaders are always looking out for the officers' best

interests. While these officers would like to reduce their liability, they may be suspicious of the individual methods used to accomplish that goal.

There are still peace officers who believe that the old ways are best and who are intolerant of change. Change which limits these officers' ability to do their job, as they see it, will be resisted. Of course, change which is seen as assisting them (i.e., improved radios) is accepted. The challenge in dealing with these officers will be to convince them that both the goal and the methods will assist them.

There are over four hundred law enforcement agencies in California. Each is independent, though there are numerous loose knit associations and alliances. This separation may be both an advantage and a hindrance, but overall is likely to be a weakness in exposure and liability reduction. As discussed above, various law enforcement related associations may oppose specific efforts. The most prominent of these will be peace officer associations. As labor organizations, they are committed to the rights of the individual officer. Adding any burden to an officer or removing any right will be fought.

The costs of defending oneself for civil liability are numerous and frequently hard to calculate. Beside the actual cost of a settlement or an award (which usually includes plaintiff's legal fees), there are the direct and indirect legal costs (i.e., court costs, witness fees), the loss of personnel from their regular duties, and the almost indeterminate costs to the individual officers involved. These latter costs may show up immediately in a change of work product, in attitude, or in physiological and psychological difficulties, or they may not show up until months or years later. Whatever the costs, agencies have no real way of knowing them and are likely grossly undervaluing them.

While some liability reduction efforts are simply minor alterations to existing methods, reporting and/or thinking, others may require significant changes. Either way, training and other start-up costs may strap agencies already stretched to their financial limits. Longer term costs may raise already onerous administrative burdens.

Some agencies, due to their size, personnel, procedures, or simple luck, have had few if any liability claims or lawsuits. Others have had claims or lawsuits but have been successful in their resolution. Whatever the case, some of these agencies are floating on a cloud with the opinion that "It won't happen here" or "We can beat it." Implementation of liability reduction efforts within these agencies is likely to be difficult.

### **STAKEHOLDER ANALYSIS**

As with the environmental and organizational analyses, the stakeholder analysis looks at the mission from a state-wide view. In this view, there are literally dozens of potential stakeholder categories. Differing from prior analyses, stakeholder analysis must make specific assumptions about each category of stakeholder. These assumptions include: Is the stakeholder impacted by what law enforcement does with the issue? Is the stakeholder able to influence law enforcement concerning the issue? Is the stakeholder concerned about the issue and/or about law enforcement? These assumptions, plotted on an Assumption Map on Page 61, form the basis of future actions concerning the categories of stakeholders. Stakeholders for law enforcement civil liability can be grouped into the following broad categories (listed alphabetically):

Attorneys: Plaintiff- As a new specialty of law, plaintiff attorneys in police abuse cases are totally devoted to their belief that they are fighting the worst in law enforcement.

Assumptions: While most would shout their support for the reduction of actual police abuse (as they define it), they would be just as vehemently against almost any other method used to reduce exposure or liability. It must also be remembered that this field is their livelihood.

Attorneys: Defense - These attorneys fall into two classes: government employees and private attorneys.

Assumptions: Both classes would support virtually any reduction of exposure and/or liability. Government attorneys are less liable to be vocal; they are likely to be limited both by their workload and governments in the actions they can take. Private attorneys may be very outspoken, but one must still remember that they specialize in law enforcement liability.

They may have mixed feelings about certain issues and about complete and true elimination of exposure and liability.

Citizens/Community - It is anyone's guess as to how the populace as a whole will view various efforts to reduce liability. Most citizens have only to gain from exposure and liability reduction, regardless of whether they are examined as the victims of the act creating the liability or they are the persons ultimately shouldering the financial burden.

Assumptions: The majority of citizens will take little action except in public opinion polls and at the ballot box. Even there, they will be influenced more easily by sensationalism than by rational thought. There will be a small number of citizens who will actively oppose individual efforts or reduction in general. Special interest groups will abound, adding their own flavor to the debate. There is also a strong likelihood that any effort on the liability issue will broaden to include other areas, frequently led by these same special interest groups.

City Managers/ Chief Administrative Officers/ Associations of Governments - Although truly three separate stakeholders, these persons may be handled together. They are charged with the running of a city or county and should have a uniquely strong interest in liability reduction both for their governments and for themselves personally and politically.

Assumptions: These officials would strongly support exposure and liability reduction efforts but would be cautious of efforts which might reduce services or which might create other liability (i.e., failure to provide law enforcement protection as promised, unlawful taking of a property right of an officer). This group may be a source of negative leaks.

Courts - This group of stakeholders includes the Supreme Court through Municipal Courts. Whatever the action taken by whatever the organization to reduce exposure and liability, someone will take counter action against the action in the courts.

Assumptions: Depending on the issue, the law, the judge, the appellate division and, perhaps, the political climate, the liability reduction action may be upheld, modified, or overturned. In other words, the assumption is that there can be no clear assumptions when



dealing with the courts. When legal action is implemented by someone during reduction efforts, the process is likely to be extended significantly.

Law Enforcement Staff and Command Officers - This group, charged with running their agencies, would be primary players in liability reduction efforts.

Assumptions: Staff and command officers have a great deal to lose if they do not succeed. Some of the methods each chooses to accomplish his/her task will vary widely. As such, support will vary widely for the different efforts. Few negative comments would be expected in public from fellow command officers, but a great deal may occur in law enforcement and government circles.

Media - The media, whether radio, television or the print media, is in a constant search for something on which to report. Depending on whether it is a heavy or light news day, the media may choose to play up a story or not cover it at all.

Assumptions: Motivations such as ratings, advertising revenues, scoop reporting, or personal preference make it very difficult to plan for overall media support or opposition. Based on the past reporting of individual reporters and journalists, support or opposition may be assessed on a person-by-person basis.

Peace Officers - Officers are a major party to lawsuits and to the efforts to reduce exposure and liability.

Assumptions: Officers would welcome the actual reduction of exposure and liability. However, they will not like, and actively oppose, most of the methods to be used to accomplish the reduction. Because some officers do not trust management intentions or are afraid those intentions would be directed toward them, those officers would strenuously resist most management methods to reduce exposure or liability. The same could be said for almost any effort initiated by citizen groups, special interest groups, and most politicians. Through their associations, officers would propose and publicize alternate methods of exposure and liability reduction. Attention must be paid up front to these associations.

Plaintiffs (bonafide) - These are persons who believe that they have been wronged by law enforcement (regardless of whether they are correct or not).

Assumptions: They will strenuously oppose liability reduction based on their personal experience. They can be expected to be particularly vocal in areas which have or might affect them directly. They may, however, support efforts in exposure reduction. Reduction efforts must not forget the powerful images these persons may project.

Plaintiffs (false) - These are persons who initiate frivolous claims and lawsuits. They stand to lose both in exposure and in liability reduction. False claims and lawsuits are their livelihood.

Assumptions: They will resist any limitations to their "rights" to litigate. It will be difficult to separate bonafide plaintiffs from false plaintiffs.

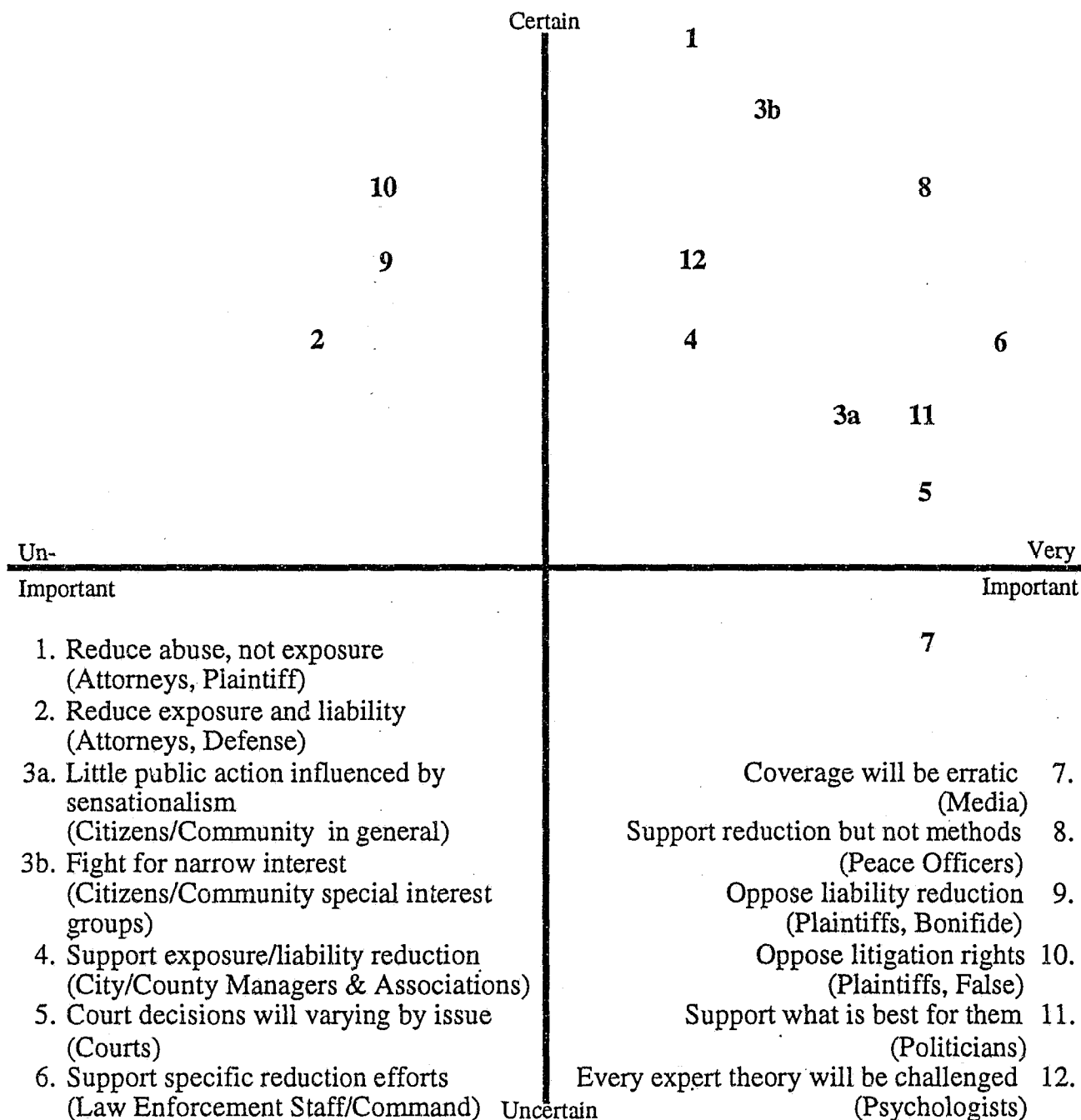
Politicians - Regardless of level (city, county, state, or federal), politicians will be deeply involved in the exposure and liability reduction process. They are attracted by events and causes which focus media attention. They are citizen representatives, and they must show their leadership. Unfortunately, integrity, superb intelligence and a high level of common sense are not requirements for election to a political post.

Assumptions: Politicians must be involved because their very existence will insist on it. They will respond in a manner which they perceive is in their best interests. As such, the quality and direction of the legislation they enact may be the answer or the problem. That is, if they do anything.

Psychologists (Snaildarter<sup>37</sup>) - Practitioners of psychology are brought into exposure and liability reduction efforts in attempts to identify liability prone officer candidates before hiring, to ferret out those already in service, to remediate identified officers, to assist in training, and to justify termination.

Assumptions: Controversy will abound as psychology has as many different views and theories as it has practitioners. In the long run, psychology will be extensively used and often challenged.

## STAKEHOLDER ASSUMPTION MAP



Numbers on the Map are placed to reflect the certainty regarding the assumptions being true and the importance of the assumptions to the organization's strategic plan.  
Refer to the Stakeholder Analysis for a detailed discussion of assumptions.

## STRATEGY ANALYSIS

During this study, many sources were available to identify alternative methods to accomplish the mission. These sources included expert interviews, returned questionnaires, and legal texts and seminars. The author also brainstormed ideas with various personnel assigned to the Los Angeles Police Department's Legal Affairs Division, South Traffic Division and Tactical Planning Section. The methods developed are summarized as follows:

- \* Claim and Lawsuit Defense - Take an aggressive stance in dealing with all claims and lawsuits, settling only those in which there is provable liability.
- \* Counseling (peer, psychologist, or superior) - May be used on a volunteer basis to deal with problems individually. May be used on a non-threatening level before officers develop into a specific liability, for identified liability prone officers as a means of changing behavior, or simply for all officers.
- \* Elimination of Specific High Risk Activities - These might include vehicle pursuits, surveillance of known criminals, K-9 searches, and undercover narcotics and vice activities.
- \* Identification of Liability Prone Officers - Using either a manual or an automated (i.e., Early Warning System) technique, identify potential liability prone officers based upon set criteria and then take action to reduce the potential for liability.
- \* In-Service Evaluation - Psychological or other evaluations to predict liability so that preventive action can be taken early.
- \* In-Service Recertification - Every officer must be recertified every stated number of years to continue as a peace officer.
- \* Investigation and Record Keeping - For each potential claim or lawsuit, investigate thoroughly as though there were already claims. This might also be extended to all citizen complaints.
- \* Legislation - Laws can remove a basis of liability, restrict court access, change proof required, and proscribe or cap awards and settlements.

- \* Pre-Employment Screening - Eliminate the candidate who shows the potential for liability before he/she enters law enforcement.
- \* Public Relations - Improve public relations to improve the confidence of the community in their police or sheriff.
- \* Reassignment - A change of exposure for officers identified as liability prone, or simply as a preventive measure for high intensity, high liability positions.
- \* Training - Universally recognized as a method to encourage proper thinking and action.

One complication was the belief that no single method would be successful by itself. With this concept in mind, the author in his interviews and discussions began to evaluate the methods in different terms. The methods were changed from techniques into overall strategies. The surviving strategies were:

- \* Employment - Attempt to select only those candidates who will be the best officers and not become liabilities.
- \* Identify and Remediate/Remove - Identify current liability prone officers and take action to remove the problem by remediation, reassignment or termination.
- \* Legal - Prepare for claims and lawsuits in the best way possible and earn the reputation that only valid claims or lawsuits will be paid.
- \* Legislation - Through associations, lobbyists or direct contact, seek new legislation at the state and federal level which would penalize frivolous lawsuits, limit attorney fees, proscribe awards where an officer was properly acting in the scope of his/her employment, assign liability on a percentage of responsibility basis, and make the system more law enforcement friendly.
- \* Service - Evaluate current service methods and practices, balancing liability against return and the requirement to act.
- \* Training - Sometimes thought of as the best preparation to do something correctly and the best defense when something goes wrong.

While developing the methods and strategies, the author also gathered specific information and evaluations about them in the following areas:

- \* Acceptance by officers, management, and the public.
- \* Certainty of accomplishment of the mission.
- \* Cost.
- \* Effectiveness.
- \* Legality.
- \* Time to accomplish the mission.

Based on the information and evaluations, the author determined that the two highest rated strategies were Identify and Remediate/Remove and Training. The method with the most diverse support was Service.

#### **Identify and Remediate/Remove**

This strategy's intent is to ferret out those officers whose actions make them liabilities and improve their actions, place them in assignments in which they cannot incur liability, or terminate their employment. While this may sound simple, it will not be. Most portions of this strategy (identification, remediation, reassignment, and termination) may be difficult to accomplish, controversial, time consuming, potentially costly, and likely to be fought in various venues including the courts. Why is it then that this strategy was selected? Simply, it is the right thing to do; it is likely to be very effective; and it will increase public confidence in law enforcement. The duties which officers perform should be the correct duties performed in the correct way. The difficulty lies in defining correct.

This method is likely to be popular with plaintiffs, plaintiff attorneys and the public, especially the "Remove" portion. Courts, defense attorneys (as against labor attorneys), city managers and governments, and staff and command officers are all likely to believe it is proper and defensible. Psychologists will be employed on both sides to defend or condemn it. Politicians will support or criticize it depending on whether the politician is conservative or

aligned with labor. It is likely to be very unpopular with most officers and particularly so with those officers and attorneys strongly aligned with labor issues.

### **Training**

There is virtually universal agreement that training can provide a strong basis for proper action. It is, however, a continuing task, time consuming and expensive. Further, what is taught, and the effectiveness of the teaching, are two questions with which one must deal. To be evaluated in the law enforcement liability context, training must be broken into two time frames: before liability incurring events are identified in an officer and after liability incurring events are identified in an officer.

There is some controversy in the before stage. Both what is taught and the effectiveness of the teaching must be defensible. Issues such as these were recently challenged in court in the Rodney King criminal and civil trials.

In the after stage, training is modification. Quite rightfully, many question its effectiveness. This is especially true after events which are very serious in nature or which show a callous disregard for the rights of others. The training may be further complicated by intervening disciplinary action.

Training is likely to be universally supported, but for slightly different reasons by different stakeholders. Similarly, the view of who gets which training, how often, and its effectiveness will be universally debated. Defense attorneys, psychologists, city managers, staff and command officers, associations and officers will general support training as a preventive and modification tool. Plaintiffs, plaintiff attorneys, courts, and citizens will tend to support training and then use that training to show that officers should have known that what they did was wrong.

### **Service**

The business concept of balancing anticipated costs against projected sales to determine potential profit may seem a strange one in law enforcement. Nevertheless, it is practiced regularly whenever an officer chooses to complete one task because it is more effective or

another because it is vitally important. In these cases, however, the choice is to accomplish something. In the case of law enforcement liability, the choice is to not do something because the liability exposure is too great. Further, the public is accustomed to officers performing these tasks and, for the most part, expects them to be done. For officers not to pursue criminals, whether in cars or on foot, for officers not to confront violent felons caught in the act, for officers not to participate in serving search warrants at narcotic locations would be totally unacceptable. Still, if properly researched, done in moderation and sold to the public, the substitution, alteration or reduction of certain services may be a practical way to lower liability exposure. Conversely, if taken too far, liability (at least in the public's eye) may attach for an officer or agency failing to protect the public and to provide a safe environment.

Plaintiff attorneys, defense attorneys, and city and risk managers would embrace this technique. Except where there is already a public outcry (i.e., high speed vehicle pursuits resulting in innocent deaths), the public would likely oppose the vast majority of service reductions. Most politicians and command and staff officers would oppose service reductions privately, but may endorse certain reductions publicly. Peace officers would oppose them because they would see such reductions as positive only for the criminal. For other stakeholders, support or opposition would be service reduction dependent. In all of these areas, the media would be a likely influence, stirring up public sentiment which might otherwise have been passive.

### **Preferred Strategy**

None of the strategies, taken separately, is complete. In an ideal situation of unlimited funding, support and time, all would be implemented. Whatever is done, it must be effective. It must be legal. It must also be viewed by the stakeholders as reasonable. Most agencies have limited resources and have time constraints on accomplishing liability reduction. Under those circumstances, a combination of the strategies Identify and Remediate/Remove and Training would be the preferred strategy to implement state-wide. While it will be this preferred strategy



upon which the remainder of this project will focus, agencies must conduct an analysis which is specific to themselves to determine which strategy or combination of strategies is best for them.

### IMPLEMENTATION STRATEGY

Regardless of the agency size and the difficulties which may exist within, there are several key issues to be addressed in any strategy to implement major change. First, the chief or sheriff must ensure that he projects his support for the change. In doing so, he should ensure that elected officials, city/county management, the community and the association representing his officers are invited as partners in developing the change plan and its implementation strategy. This will help to prevent stakeholders from erecting obstacles or sniping at various stages of implementation.

Second, except in agencies with a well known problem, the plan should be presented as a step forward in a natural evolution of law enforcement, not as a quick fix. There is little advantage in giving plaintiff attorneys added ammunition, and embarrassing and angering your officers, at the same time.

Third, added funding may be needed for study or implementation. If possible, the chief or sheriff should seek out grant or business funding to launch the plan.

Fourth, accurate legal advice is extremely important. Legal challenges are almost guaranteed to occur when making major changes. A chief or sheriff should implement a plan which can survive such a challenge. It may be necessary to seek certain legislative changes at a local, state or even federal level to implement a total plan. Implementation of certain portions of the plan may have to wait those legislative changes.

The following steps should be employed as part of the Implementation Strategy and implemented in the order presented or as indicated:

- \* The chief or sheriff and his staff, together with city/county management, citizen and officer association representatives, must develop or revise policies governing officer actions in high liability situations. The new policies should be highly publicized.

There is potential for conflict in this area. The ideal actions sought by the public must be balanced against the practical realities of the situation. Open, frank discussions should provide agreement.

- \* Training staff must revise academy training on high liability subject areas, emphasizing accepted methods and new policies. Include extensive class time on liability hazards, reduction, and the meaning to the individual officer.

There should be little disagreement here after policies have been agreed upon.

- \* The training staff must revise in-service training to include the above. Officer groups most exposed to liability situation should be scheduled for the training first.

Same as above. There may be some disagreement as to which officer groups should receive the early training. The in-service training may take added time at first but overall it should take little additional time as on-going, in-service training is required.

- \* Carefully chosen, well respected personnel should implement an officer counselling program which must be strongly encouraged and endorsed by command and supervision. The counselling should be on three levels: peer, supervisory and psychological. Peer participation should be recognized and, where appropriate, rewarded.

This type of program, or portions thereof, has been very successful in some agencies.

As long as this is a voluntary program, there should be little controversy. It may be time consuming. This program should be implemented as soon as possible, as it will take time to develop and be accepted.

- \* A specially appointed agency committee must design and implement an Early Warning System (EWS) to identify potential high liability officers. This system may be manual or automated depending on the agency size. The EWS should include, but be limited to, traffic collisions, pursuits, sick time, peer and supervisory evaluations, citizen complaints and warnings to officers not amounting to misconduct, and supervisory counselling.

This is likely to be the most difficult portion of the plan. Citizen groups will likely favor everything included above and much more, and they will be inclined to want

decisions made strictly on the basis of information in the system. Peace officer associations will question almost all included categories, will argue that the agency is developing information for plaintiff attorneys, will use the "active officer gets more complaints" argument, and will question if the system proves anything. Development of this system should start immediately. A trial run may prove valuable both for development and agreement.

- \* Training staff should schedule individually identified, high liability potential officers to in-service training or conduct special training specific to the liability area.

Few will argue against the training itself, but peace officers and their associations will argue that singling out certain officers will stigmatize them. It may. At this point, officers may resort to legal avenues available to them to curtail/contain agency efforts.

- \* Supervision and psychologists should schedule identified, high liability potential officers for counselling appropriate to their liability exposure area.

Same as above. Counselling is even more likely to be sensitive to officers than going to training.

- \* Commanding officers must reassign identified, high liability potential officers away from high liability assignments.

This may be a preventive measure to protect officers or a signal that certain behavior is not acceptable. Peace officers tend to like the assignments they are in. Removing them due to liability issues will cause some to take legal action. They may base the action on working conditions, loss of pay or overtime, loss of a specific opportunity (i.e., promotion) or the stigma attached to the move.

- \* The agency as a whole must take strong, disciplinary action in high liability areas when policy, training and counselling have failed to ensure proper action.

Popular with most of the community, this method of reducing liability will be very unpopular with officers and their associations. The degree of proof and the level of

penalty will be keen issues. Legal challenges in courts known to be unfriendly to employers are likely.

### ACTION REQUIRED

In most change, there is a winner and a loser. The current plight of California law enforcement in the civil liability arena is one of two situations. In the first, a peace officer is wrong in the actions taken or not taken, and a plaintiff ends up losing in some way. When a lawsuit is brought, the plaintiff usually wins. The settlement or award may be too large, but the plaintiff's attorney takes care of that.

In the second situation, a peace officer acts properly, yet a plaintiff is not happy with the outcome. When a lawsuit is brought, the plaintiff frequently wins. There should be no settlement or award, but the officer, agency or government is forced to pay.

Liability reform must address both situations. Unfortunately, there are varied views on what should be done, and there are many avenues of approach. Law enforcement needs a broad based, state-wide approach. That is unlikely but possibly will occur in limited ways. Each agency must assess its own situation and environment and choose what is the best overall approach to take. Taking no action, unless the agency is perfect, is foolish and shortsighted. No agency is perfect.

## IMPLEMENTATION

Discussion and analysis to this point has concentrated on a state-wide approach. It has specifically not focused on a particular city or county law enforcement agency. As a vehicle to discuss specific methods of implementing a strategy, it will be necessary to focus on a specific situation. The fictitious California city of Good will be used to develop a Strategic Plan and a Transition Management Plan.

### THE CITY OF GOOD

Good has a diverse population of 250,000. It has a wide variety of land use, including all levels of housing (ranch style to high density; old to new; ghetto to very expensive), several large shopping centers, major commercial centers and light industry. Good has a city government wherein the mayor and city council are competing for power in turbulent financial times. A new city manager has just been appointed.

The Police Department is comprised of 400 sworn and 80 civilian employees. The Department's former good reputation was hurt six months ago with the publication in the local newspaper of detailed excessive force complaints from a wide variety of citizens. Last month, the city council received a report by the outgoing City Manager on police lawsuits which showed that claims, settlements and awards are at an all time high, and the potential for huge future financial losses is very significant.

### STRATEGIC PLAN

The mission is to reduce the level of civil liability of the Good Police Department caused by peace officers who could be identified in advance as significant civil liabilities. A multiple task strategy was chosen to accomplish the mission:

- \* Identification - Determine those officers whose actions make them liabilities.

- \* Reduce the liability - Either improve the identified officers' actions (this may include training and positive/negative discipline), place them in assignments in which they cannot incur liability, and/or terminate their employment.
- \* Training - For all officers before liability incurring events are identified involving them.
- \* Training - For officers after liability incurring events are identified involving them.

While this strategy may sound simple, it will not be. All of the tasks (identification, remediation, training, reassignment, and termination) may be difficult to accomplish, controversial, time consuming, potentially costly, and likely to be fought in various venues including the courts. They may be further complicated by intervening disciplinary action. Overall, the methods used must be defensible. Nevertheless, the tasks if successfully implemented are likely to be very effective and will increase public confidence in law enforcement.

A Strategic Plan based on a background evaluation and Strategic Analysis has been developed at the direction of the Chief of Police. The Strategic Plan Task Force included the participation of outside experts, community leaders, and officers themselves.

### TRANSITION MANAGEMENT PLAN

The completed Strategic Plan was presented to the Chief of Police and approved. The Chief appointed Captain Woo, the head of the Strategic Plan Task Force, as Transition Manager to implement the Plan. Because of the extreme feelings associated with liability issues, Captain Woo decided that an organizational structure separate from the current Department organization was needed to implement the Strategic Plan. Under the new structure, each of the involved groups would feel it had a significant input, while Chief Target approved all final decisions. Woo selected personnel representative of organizational tasks, all ranks and a variety of constituencies to be part of his team. The following Transition Management (TM) Team members, non-voting advisors, and staff were selected (Note: approximately 50% of the Strategic Plan Task Force and all of the support staff transitioned to the TM Team):

- \* One representative each from the ranks of officer, detective, sergeant, lieutenant and captain (5).
- \* One representative from each of the officer associations, to be selected by the association presidents as their representatives (4).
- \* A lieutenant and a sergeant from the Department training staff (2).
- \* A personal representative chosen by each of the commanders in charge of patrol, detectives, and administration (3).
- \* A psychologist who regularly works with the Department (1).
- \* An advisor from the Commission on Peace Officer Standards and Training (POST) (1).
- \* An advisor from the City Attorney's Office (1).
- \* Staff from the Department's training unit (2 officers) and planning unit (1 officer).

### Key Players

Key players may be defined as persons whose support, neutrality, or opposition to change will ensure its success or failure. Most of the time, a key player will represent a specific group, and the key player's stance on the change will bring with it the support or opposition of the group. In developing a Transition Management Plan to successfully implement the Strategic Plan to reduce civil liability, the TM Team must identify the following persons as key players:

- \* Chief of Police

Chief Mark Target has been under fire ever since the newspaper stories appeared. At the urging of the former City Manager, the Chief had appointed the Task Force and its leader to develop the Strategic Plan. The new City Manager has been pressuring the Chief to take immediate and visible steps to deal with the officers responsible. The Chief supports the Strategic Plan but is concerned that it will take too long and be too costly.

- \* Police Captain Assigned to Head the Task Force

Captain Charles Woo was chosen to head both the Strategic Plan Task Force and the Transition Management Team. He was chosen by Chief Target because of his strong

interpersonal abilities, senior status and strong, positive reputation amongst both law enforcement personnel and the community. He is firmly committed to the Strategic Plan. He plans to retire in approximately twelve months.

\* President of the City of Good Police-Community Association

Mrs. Trudy Lincoln, President of the Police-Community Association, holds a powerful position because of the strong citizen participation in the Association. This group has traditionally been extremely supportive of the Police Department and its programs. The Association's President is very close to the officers. She has distanced herself somewhat from the command and staff officers since the newspaper stories appeared. She may have been hurt because she was not chosen to be on the Strategic Plan Task Force. Recently, City Councilman Castelle has taken an interest in the Police-Community Association and its President. Because of his assistance, the Association has been able to diversify from the traditional law enforcement support role to accomplish other tasks within the community. With her new influence and power, President Lincoln has been heard around the city making comments against the Strategic Plan.

\* President of the Police Officers Association (POA)

Under fire from both citizen groups and member police officers, POA President Officer Thomas O'Brien has blamed Department management and staff for poor leadership, inadequate training, and inadequate defense of officers by the City Attorney against fraudulent claims. O'Brien was part of the Task Force which developed the Strategic Plan. He strongly supports the early training and counseling aspects of the plan. While publicly he is neutral on remediation and is vocally against identification and disciplinary issues, privately he acknowledges that remediation, identification, and discipline could be acceptable if properly managed. He is totally against termination of an officer solely on a high liability basis.



- \* Presidents of the Association of Black Officers (ABO), the Hispanic Association for Law Enforcement (HALE), and the Female Officers Association (FOA)

Within the Good Police Department, 21% of the police officers are Black, 34% are Hispanic, and 15% are female. Each association had a representative on the Strategic Plan Task Force. The association presidents are caught in a dilemma similar to that of the POA President. They believe that some action must be taken and agree that the strategies developed are likely to be effective. Conversely, there is considerable pressure from their officer ranks to oppose identification, discipline, and especially termination, particularly toward HALE President Detective Art Cortez.

- \* The City Manager

Dwight Parkinson replaced the former City Manager only last month. His predecessor's contract was not renewed because he could not get along with the mayor and council members. Parkinson brings with him an impressive record from his last position as an assistant county manager in a large county in the Mid-West. He is the most prominent Black in city or county government. He has had little time to evaluate either the situation or the Plan. He has said he will support the Plan because he realizes that delay will expose the City to additional liability. However, he has also indicated that he may reevaluate his position as he becomes more familiar with the Plan.

- \* The Mayor of the City of Good

Locked in a power struggle with the City Council, Mayor Lisa Perez may try to win popular approval and actual power using the law enforcement liability issue. At the request of Chief Target, Mayor Perez appointed one member of the Strategic Plan Task Force. At this time, the Mayor has not committed toward the Strategic Plan.

- \* The Good City Council

In a behind the scenes power struggle with Mayor Perez, City Council members are unlikely to coalesce into a single voice. A danger lies in the fact that individual members may use the law enforcement liability issue for personal gain. At the request of the Police

Chief, the City Council appointed two members of the Strategic Plan Task Force. At this time, Councilman Blanchard has committed toward the Strategic Plan, Councilman Castelle is opposed to it, and three council members remain uncommitted.

\* The District Attorney

District Attorney Ben Beck, who came up through the ranks in the District Attorney's office, has a liberal reputation based primarily on his comments about peace officer tactics, use of force, and honesty. He has been a constant critic of Police Chief Target for not taking strong actions to curb the violent tendencies of his officers. Many believe it may have been he who leaked information to the newspaper. While the District Attorney was not represented on the Strategic Plan Task Force, he has long advocated many of the tasks the Task Force recommended.

\* President and Chief Executive Officer of the Delaware Corporation

As President of the City's largest employer, a leader in the private sector, and a major contributor to local political campaigns, Rutherford Whitley is a powerful force in the community. Two years ago, his 23 year old son was booked for Battery on a Peace Officer amid counter charges of police brutality. Although not involved in the Strategic Plan Task Force, he has been a vocal proponent for reform within the Police Department.

\* The Managing Editor of the Good Gazette

Chandler Thomas, as editor of the Good Gazette, the newspaper which first published the excessive force accusations, has been following the development of a Strategic Plan with cautious optimism. Editorial opinion seems to be supporting the Plan, but an outright endorsement is awaiting details.

### Commitment Planning

Among any set of key players, there is a critical support ("critical mass") level needed to ensure successful and complete implementation of a strategic plan. As preparation for presentation of the Strategic Plan within city government, the Department and the community,

the Transition Management Team charted a Critical Mass Analysis (see below). This analysis was based on knowledge of the plan, the key tasks needed to accomplish each portion of the plan, and the key players involved. Specifically, the TM Team determined whether each of the key players was part of the critical mass (those persons whose support or lack of opposition was necessary for successful implementation and indicated below by **bold print**), the key player's current level of support (as indicated by a "Current" or "Current" under one of the four headings), and the level of support which is critical for the plan's success (indicated by Critical or Critical). Where there was support for certain portions of the plan, but opposition for other portions, the lowest current level of support is shown. Where no position could be determined about the current support, no level is shown. After charting their analysis, the TM Team could easily visualize which players would play critical roles, which required attention to change their level of support, and which were potential obstacles to implementation. Further analysis of the key players for changes or original errors in the original analysis is a continuing task for the TM Team.

<u>Key Players</u>	<u>Block Plan</u>	<u>Allow Plan To Proceed</u>	<u>Assist To Put Plan In Effect</u>	<u>Make Plan Work</u>
<b>Chief Target</b>			Current --->	<b><u>Critical</u></b>
<b>Captain Woo</b>				Current <b><u>Critical</u></b>
President Lincoln	Current	--->	<u>Critical</u>	
POA President O'Brien	Current	--->	<u>Critical</u>	
HALE President Cortez	Current	--->	<u>Critical</u>	
<b>City Manager Parkinson</b>			Current --->	<b><u>Critical</u></b>
<b>Mayor Perez</b>			<u>Critical</u>	
<b>Councilman Blanchard *</b>			<u>Critical</u> <---	Current

Councilman Castelle	Current	--->	<u>Critical</u>
Other Council Members *			<u>Critical</u>
DA Beck		<u>Critical</u> <---	Current
Mr. Whitley		<u>Critical</u>	
Mr. Thomas		<u>Critical</u> <---	Current

\* Support of at least three Council members is needed due to portions of the plan which will require special funding.

---> Arrows indicate the direction necessary to obtain critical support.

<--- Arrows indicate when support could erode without injury to the plan.

Chief Target and Captain Woo, together with key members of the former Strategic Plan Task Force, have yet to complete their original task. They must market the Plan, developing key supporters and neutralizing objections. To accomplish this, they will have the responsibility of completing the following:

- \* Presenting an overview of the Strategic Plan to City Manager Parkinson and, with his concurrence, to Mayor Perez and the City Council.

The presentation of a vision for the future to solve the problems of the past and present is a key element of these presentations. Concurrence for the Plan as a single package is another key element. The Plan is an integrated solution which depends on all its parts to be successful.

- Parkinson is new and may not be able to comprehend the total picture in a short exposure. His support is critical because he runs the City. A clear picture of the past and current problems will convince him of the need. Expertise, a diversity of input, and wide acceptance should convince him to support the Plan. It would be wise to update him regularly on the Plan's progress, including in each briefing additional background and reasons for continued support of the Plan.

- Mayor Perez is a key figure whose assistance is necessary. She is the most prominent figure in City government and its most frequent spokeswoman. She is key to approval of any funding supplied by the Council. Because many of the potentially negative aspects of the Plan may be directed at officers who are Hispanic, her support could prevent negative cultural overtones which might subvert support within the community. Although she has not indicated her position, she is knowledgeable about the problems facing the City because of the liability issues. She will be looking for reasonable measures to deal with them. Captain Woo's solid reputation and his skills of persuasion can be used to augment the Plan itself.
- Although there is considerable bickering amongst Council members, they still are faced with a serious problem with which they must deal. One side agenda has already surfaced in Councilman Castelle's success in siphoning off Mrs. Lincoln to form his own political base. Funding originates with the City Council, and added funding is required for several key portions of the Plan. Aside from establishing a solid need and basis for the Plan, the Council members may be swayed by the knowledge that the Plan is about to be announced to the public. Constituents will want to see Council leadership, and opposing a method to improve law enforcement while reducing lawsuit costs may prove risky.
- \* Meeting with the Department's command staff (the Chief's executive team).  
Such a meeting is key to ensuring that the Department command staff understands the level of support needed from each of them to implement the Plan.
- \* Announcing the Strategic Plan to the Department and the community.  
This is essentially a time to develop support and commitment for the Plan and to lessen anxiety by describing why the Plan is necessary, what is to be accomplished, and why it will benefit the City of Good and its police officers. To show wide spread support, it would be wise to have representatives present from a wide variety of Department groups

when announcing the Plan to the Department. The same is true for having respected experts and community leaders present when announcing the Plan to the community.

- \* Meeting with critical members of Police Department (i.e., peer leaders), City government (i.e., mayoral and council staff), business (i.e., Mr. Whitley and Mr. Thomas) and the community (i.e., Mrs. Lincoln).

These meetings would be used to explain the Strategic Plan, to answer questions, and to develop support and perhaps actual assistance. They need to be on-going in some instances to ensure that support does not wither. It would appear that basic support is already in place with Whitley and Thomas. Getting commitments of personal and active support in the transition process should maintain it. Obtaining the editorial support of Thomas may be more difficult, however, it should be strenuously sought after.

There may be some difficulty with Mrs. Lincoln. The Police-Community Association is a Police Department group. Continued movement of the association toward a political agenda will have to be stopped or the association's value to the Department will be lost. In positive terms, it may be necessary to let Mrs. Lincoln know that she may have to choose to spearhead this key Department issue with the community or be removed as President to allow her to enter the field of politics.

None of these meeting should be one time contacts. The advantage of continual meetings is that solid reasoning, data, and proof usually sway the opposition. At least they can never say they had no input. The Strategic Plan should be presented as a positive step forward in a natural evolution of law enforcement, not as a quick fix or masking of a problem. There is little advantage in giving plaintiff attorneys added ammunition, and embarrassing and angering officers, at the same time.

### **Organization and Responsibility**

Concurrent with the above, the TM Team must organize itself and assign responsibility to TM Team members and key players. The TM Team should meet and chart their responsibilities.

The following RASI Chart<sup>38</sup> outlines each TM Team member or key player's responsibilities on major actions, activities, or decisions.

Actions / Activities / Decisions	Chief Mark Target	Captain Charles Woo	POA President O'Brien	City Manager Parkinson	Mayor Lisa Perez	Department Training Staff	Department Planning Staff	Patrol Representatives	Detective Representatives	Administrative Representatives	Department Psychologist	POST Advisor	City Attorney Advisor
Develop Strategic Plan	A	R	S	I	I	S	S	S	S	S	S	S	S
Sell Strategic Plan to City Manager	R	S											S
Sell Strategic Plan to Mayor	S	S		R									S
Obtain Support for Strategic Plan from Department Command Staff	R	S				S	S				S		S
Obtain Support for Strategic Plan from the Community	R	S	S	A	I	S	S	S	S	S			
Obtain Support for Strategic Plan from Key Public Leaders	R	S	S	S	S	S	S	S	S	S		S	S
Develop or revise policy	A	R	S	S	I	S	S	S	S	S	S	S	S
Locate and secure funding for Transition Plan	A	R		S	S							S	S
Develop system to identify liability prone officers	A	R	S				S	S	S	S	S	S	S
Develop liability reduction methods based on modification of officer actions	A	R	S		S	S	S	S	S	S	S	S	S
Develop liability reduction methods based on reassignment	A	R	S				S	S	S	S	S		S
Develop liability reduction methods based on termination	A	R	S								S	S	S
Develop training specifically targeted at individual officers	A	R	S			S		S	S	S	S	S	S
Develop training for high liability exposure areas	A	R	S			S		S	S	S	S	S	S
Develop or revise disciplinary actions based on liability	A	R	I	S	I	I	I	I	I	I	I	S	S
Develop feedback and evaluation methods	A	R	S			S	S	S	S	S	S	S	S
	R	equals	Responsibility (not necessarily authority)										
	A	equals	Approval (with right to veto)										
	S	equals	Support (provides something)										
	I	equals	Inform (no veto right)										







on the basis of information in the EWS. The POA will question almost all included categories, will argue that the Department is developing information for plaintiff attorneys, will use the "active officer gets more complaints" argument, and will question if the system proves anything. Development of the criteria, sources, and system should start immediately. A trial run may prove valuable both for development and agreement.

- \* Liability Reduction (modification of actions) - Selection of the methods to be used in an attempt to modify the actions of individual officers who have been identified as high liability prone (i.e., peer, supervisory and psychological counseling; performance contracts; leaves of absence; training {discussed independently below}).

• Time	Identification of potential methods	60 days
	Research on the methods	120 days
	Approval	<u>60 days</u>
		240 days

- For example, carefully chosen, well respected personnel might implement an officer counseling program. Such a program must be strongly encouraged and endorsed by command and supervision. The counseling should be on three levels: peer, supervisory and psychological. Peer participation should be recognized and, where appropriate, rewarded.

This type of program, or portions thereof, has been very successful in some agencies. As long as this is a voluntary program, there should be little controversy. It may be time consuming. This program should be implemented as soon as possible as it will take time to develop and be accepted.

- As another example, supervision and psychologists should schedule identified, high liability potential officers for counseling appropriate to their liability exposure area.

Counseling which is ordered is very likely to be sensitive to officers. If it were to remain confidential, acceptance would be made easier. However, it is very likely

that counseling will become part of reassignment and disciplinary issues where action modifications have not been successful.

- \* Liability Reduction (reassignment) - Identification of positions and duties either low in liability exposure or likely to be successful in modifying the actions of high liability prone officers. Development of criteria for reassignment.

• Time	Identification of positions/duties	(120 days)
	Identification of criteria (concurrent with above)	180 days
	Trial runs on known officers	60 days
	Approval	<u>60 days</u>
		300 days

Reassignment may be a preventive measure to protect officers or a signal that certain behavior is not acceptable. Officers tend to like the assignments they are in. Removing them due to liability issues may cause a few to take legal action. They may base the action on working conditions, loss of pay or overtime, loss of a specific opportunity (i.e., promotion) or the stigma attached to the move.

- \* Liability Reduction (termination) - Development of criteria within the disciplinary process as to actions, severity of actions, and frequency of occurrence, or a combination thereof, which would warrant or demand termination.

• Time	Identification: actions, severity, frequency	(120 days)
	Development of criteria (concurrent with above)	180 days
	Approval	<u>60 days</u>
		240 days

This, along with the identification issue, will be the most difficult issues for officers and their associations.

- \* Training (individual) - Development of training specifically targeted for individual officers identified as high liability prone and appropriate to the specific area of liability.

- Time Identification of liability areas (60 days)
- Development of training (180 days)
- Identification of officers (concurrent with above) 240 days
- Approval 60 days
- 300 days

Few will argue against the training itself, but officers, the POA and possibly minority officer associations may argue that singling out certain officers will stigmatize them. It may. At this point, officers may resort to legal avenues available to them to contain Department efforts.

- \* Training (high liability) - Development of training appropriate for all personnel in exposure areas of high potential liability. Training staff must revise academy and in-service training on liability areas, emphasizing accepted methods and new policies. Extensive class time must be included on liability hazards, reduction, and the meaning to the individual officer. Officer groups most exposed to liability situation should be scheduled for the in-service training first.

- Time Identification of liability areas 60 days
- Development of training 180 days
- Approval 60 days
- 300 days

There may be some disagreement on which officer groups should receive the early in-service training. The training may take added time at first but overall it should take little additional time as on-going, in-service training is required by POST.

- \* Discipline - Development of strong, disciplinary action in high liability areas when policy, training and counseling have failed to ensure proper action.



as "macho," by provision of special counseling for Hispanic officers, and by a guarantee that a special evaluation will be completed after one year to see if Hispanic officers are being identified either by raw data or overall criteria as liability prone.

Within the Department and its officer associations, there will be some who know that the Strategic Plan will be directed at them. Banded together in some fashion (i.e., as a special committee within their employee association) or on their own, these officers may attempt to subvert the Plan. Due to the controversial nature, it may be easy to convince others to join them. The subcommittee should use various group techniques (i.e., participative seminars, roll call training, confrontational) to change the opposing officers' minds. Failing that, it may be necessary to simply overpower opposition after securing the support of key power groups and peer leaders.

The same types of difficulties may present themselves in the community environment, and many of the same techniques can be used to neutralize and win over the opposition. Few people will continue active opposition when overwhelmed by their fellow citizens.

\* Evaluation - With the assistance and input of all other subcommittees, development of on-going methods to evaluate progress both for the Plan as a whole and for its individual components. Provide feedback to TM Team with provisions to continue the feedback both to operational units and to the Chief after the Team has been disbanded.

• Time	Development of criteria	180 days
	Development of sources and systems	60 days
	Approval	<u>60 days</u>
		300 days

Too frequently a project stops with its start up. No one is ever sure if it was successful. Further, what started as successful may not be so after the passage of time. Feedback reassures and builds confidence while allowing for constant improvement in changing times.

Accurate legal advice will be extremely important to the TM Team. The Strategic Plan must be able to survive legal challenges. It may be necessary to seek certain legislative changes at a

local, state or even federal level to implement the total Strategic Plan. Implementation of certain portions of the Plan may have to await those legislative changes.

### **Implementation**

The Strategic Plan is actually made up of a large number of smaller plans all working toward an overall goal. Some plans will hardly be noticeable when in place, especially at first. Others may need development periods to work out the kinks. Although some may be interrelated (i.e., policy must be developed and approved before it can be taught), most can and should be implemented as soon as possible.

The strategy for implementing each will vary, depending on the plan. For example, the task of identification of high liability prone officers begins with the simple system of collection and analysis of data. The data is then submitted to assist in the determination if an officer meets certain criteria. The process may be in place for days, weeks or months before the first officer is identified. Unless it is computer based, it is unlikely that many difficulties other than slow arrival of information will arise until that first identification takes place. Other plans include a simple change of training subjects and, perhaps, an increased number of training days.

Policy changes are likely to be noticed immediately. These should be carefully implemented with detailed explanations of what the problem faced is, what damage could befall an officer, and how the policy will help the officer, assist the Department, and improve law enforcement for the community.

### **Feedback and Evaluation**

Built into each subcommittee area is the need for feedback to evaluate the success or failure; to make alterations in process, information or action; and to provide information to both key players and stakeholders. While the TM Team may be reduced as various tasks are implemented or disbanded after all major portions of the Plan are in place, responsibility must be assigned within the normal operational units to continue the Plan's tasks. Because of the importance of

liability reduction in a city the size of Good, overall responsibility for maintenance of on-going evaluation and effort should be specifically assigned within the Department.



## CONCLUSIONS

The problem is real. The cost is real. The answers are many and varied. A solid understanding of law enforcement civil liability and exposure problems is without value unless something is done ultimately to remedy the problems. A strategic plan is worth nothing unless it can be put into use. In a two worker company, that may take nothing more than the owner telling his employee how they are going to do it from now on. In a large organization, strongly influenced by public policy and public opinion and covering subjects so universal as community safety and public liability, implementation may be difficult and cumbersome, if it can be accomplished in total at all. Compromise will be the rule. Extensive planning, selling, public posturing, perhaps even a little arm twisting, will be required for a chance at even partial success.

There are many answers to the issue (By the year 2004, what actions will law enforcement agencies take to deal with peace officers identified as significant civil liabilities?) and the sub issues. Many outstanding efforts are taking place now. The answers begin in the current policies and actions of many of today's law enforcement agencies and build upon them. Promising future efforts are likely to include better use of the information available to us (we are in the Information Age), improved technology (to change how we do things), and added responsibility for our own individual actions (more personal responsibility if not more personal liability).

The approach taken in this report only scratched the surface and whetted the appetite. The opportunities, indeed, the need, for additional research is enormous. Specific areas should include: Early warning systems and identification; pre-employment screening and investigation of profiles; early intervention and peer counselling; employment contracts; incentive systems (i.e., promotion, assignment, transfer, salary and benefits); service areas versus community needs; liability law, cases, and trends to include specific tactics of plaintiffs in filing claims and lawsuits; and early and thorough preparation for lawsuits and claims. There is also the need to examine liability from another direction. That is, how an officer's actions may make him/her ineffective as a peace officer. For example, statements made over a decade prior by Los Angeles Police Detective Mark Fuhrman in his attempt to secure a psychological pension opened many

doors for the O. J. Simpson defense team. The defense is now and will continue to attempt to discredit Fuhrman's testimony and evidence critical to the murder case against Simpson. Will it necessary to totally evaluate peace officers before placing them in potentially critical positions?

Unfortunately, civil liability except in a few cases such as Rodney King is seldom brought to light immediately. Instead, it frequently languishes in the court system for years, giving time to the guilty, frustration to the innocent, and money to the attorneys. Discussions about liability reduction tend to be one of two types: they are in the abstract and center around lists of cases, or they are about the specific case at hand. Analysis and study seldom go far. It is a fact that there are many other, seemingly more demanding problems taking the time and attention of a chief and city manager, or a sheriff and a county administrator. Still, some small law enforcement agencies are well on their way to minimizing both exposure and civil liability in ways which are effective and progressive, yet not time consuming. And they are just in time. Plaintiff attorneys have found that the depth they must reach in large agencies and the money that must be spent are simply too costly. By suing a smaller agency without the resources and, perhaps, the background, to defend itself, plaintiff attorneys have found an easier target and are moving there today. Still, for medium to large agencies which are frequently the target of organized civil litigation, exposure and liability are much larger and more complicated problems. In spite of these difficulties, what an examination of this issue has shown is that there exist both simple and sophisticated methods to reduce needless exposure and minimize the actions of those officers who just don't seem to understand their mission as peace officers.

Many techniques, technologies, and structures have been developed to assist in the implementation of change. Every situation is different, and no two are ideally suited to the same set of practices. The techniques and plans discussed here were kept purposefully broad and general because the subject was of the same classification. Nevertheless, law enforcement civil liability is a problem which demands attention. It can be reduced! Failure to act with the myriad of possible solutions which exist is negligence. We must all remember that failure to act may be command negligence, which itself can be a source of law enforcement liability.

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- 1 42 United States Code §§1981; 1982, 1983, 1985, 1986 and 28 USC §§1343, 1331, 1332.
- 2 42 USC §1983.
- 3 Ibid, 2
- 4 Civil Rights Attorney's Fee Awards Act of 1976 added 42 USC §1988.
- 5 *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658, 98 S.Ct. 2018 (1978).
- 6 *Report of the Independent (Christopher) Commission on the Los Angeles Police Department* (July, 1991).
- 7 *The Los Angeles County Sheriff's Department, A Report by Special Counsel James G. Kolts & Staff* (July 1992).
- 8 Ibid, 6, page 55.
- 9 Ibid, 7, page 3.
- 10 Ibid, 7, pages 159-160,.
- 11 Newspaper advertisements of O'donnel & Mandell "Do you have a SEXUAL HARASSMENT case?"  
Citizens against Lawsuit Abuse billboard along the westbound 91 Freeway at Alameda with (800) 293-CALA  
telephone number for further information
- 12 *Los Angeles Times*, July 22, 1992, "Members of Council May Face Trial in Police Suit"  
*Chicago Tribune*, May 22, 1992, "Court Finds City Liable in \$7.5 Million Suit"  
*Boston Globe*, Nov 21, 1991, "Family of Youth Killed by Officers Files suit Against Police"  
*Los Angeles Times*, Sep 6, 1991, "City Is Liable in Rape by Officer, Court Rules"  
*Los Angeles Times*, June 6, 1990, "Payment of \$850,000 Urged in Complaints Involving Deputies"  
*Los Angeles Times*, Sep 14, 1989, "Torrance Police to Pay \$82,500 in Punitive Damages"  
*Boston Globe*, April 13, 1989, "City of Everett Will Appeal \$4m Award in Brawl Case"
- 13 *Los Angeles Times*, Oct 11, 1991, "City Attorney Creates Units to Defend Police against Lawsuits"
- 14 *Los Angeles Times*, Dec 3, 1992, "'Moralistic' Issue Cited in Deputy's Firing" and Dec 4, 1992,  
"Block Denies Policy Change on Discipline"

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- 15 *Risk & Insurance Magazine*, published monthly by Axon Magazine Group, 747 Dresher Road, Suite 500, Horsham, PA 19044-0980
- 16 *Law Enforcement Legal Defense Manual*, 421 Ridgewood Avenue, Suite 100, Glen Ellyn, IL 60137-4900
- 17 *Moon v. Winfield*, 368 F. Supp. 843 (N.D. Ill. 1973)
- 18 *Grandstaff v. City of Borger*, 767 F. 2d. 161 (5th Cir. 1985)
- 19 Ibid, 6.
- 20 Ibid, 7.
- 21 Ibid, 6, Forward (iii).
- 22 Ibid, 6, Forward (iv).
- 23 Ibid, 7, page 195.
- 24 Ibid, 7, page 282.
- 25 Ibid, 7, page 342.
- 26 Unpublished summary of December 8, 1990, Police Misconduct Lawyers Referral Service Seminar put on at California State University, Los Angeles; edited by M. M. Wasson  
Handout material for January 20, 1993, Management Update Legal Seminar for the Los Angeles Police Department
- 27 Los Angeles Deputy City Attorney Richard James; Los Angeles Police Lieutenant H. Tim Halford and Sergeant Harold L. Hall, Legal Affairs Division; Los Angeles Police traffic collision reconstructionist Detective James M. Dawson, South Traffic Division
- 28 South Traffic Division, Los Angeles Police Department
- 29 Lieutenant Tim Halford, attorney and Commanding Officer, Legal Affairs Division, Los Angeles Police Department; Gordon W. Trask, Principal Deputy County Counsel, County of Los Angeles; Sergeant Gordon Graham, attorney and field supervisor, California Highway Patrol; Martin J. Mayer, Mayer & Associates --- In the latter two cases, seminars put on by the interviewees were

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attended. In Mayer's case, only a short discussion was held after the seminar; in Graham's case, an extensive interview occurred.

30 Readers wishing detailed copies of questionnaire results may contact the author c/o the Los Angeles Police Department, 150 North Los Angeles Street, Los Angeles, California 90012.

31 Captain Scott Berry, Yuba City Police Department; Lieutenant Paul Stotesbury, Escondido Police Department; Lieutenant James Williams, Alameda County Sheriff's Department.

32 The Hunter-LaLey agreement was the settlement of a court case against the Los Angeles Police Department alleging that certain minority employees had been discriminated against in promotion and positions which would aid in promotion.

33 Weaknesses, Opportunities, Threats, Strengths Underlying Planning (WOTS-UP)

34 Strategic Assumption Surfacing Technique (SAST)

35 *FBI Law Enforcement Bulletin*, November 1993, Hiring Standards Ensuring Fitness for Duty, an article by Special Agent Daniel L. Schofield

36 Ibid, 5.

37 Snaildarter is defined as an unanticipated stakeholder who can radically impact the chosen strategy.

38 Responsibility, Approval, Support, and Informed (RASI)

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Schofield, Daniel L., Special Agent, Legal Counsel Division, FBI Academy, Legal Issues of Pursuit Driving, FBI Law Enforcement Bulletin, May 1988, Pages 23-30

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Stamer, T. R., Minimizing The Law Enforcement Exposure, Risk & Insurance (magazine), May 1993, pages 27-29

## Addenda

#1	Questionnaires		
	Preliminary	Page	99
	Chief of Police / Sheriff	Page	100
	Plaintiff Attorney	Page	101
#2	Trend Change Results and Charts	Pages	102 - 108
	Nominal Group Technique - Group #2		
#3	Event Results and Charts	Pages	109 - 115
	Nominal Group Technique - Group #2		
#4	Event Cross Impact Analysis	Page	116
	Nominal Group Technique - Group #2		
#5	Trend Results and Charts	Pages	117 - 123
	Modified Policy Delphi		



**Commission on Peace Officer Standards and Training  
Command College Class 18, Captain M. M. Wasson  
Independent Study Project**

Police                      Sheriff                      Other                      # Sworn \_\_\_\_\_

Question No. 1      Within your agency, how do you identify peace officers who may be a significant civil liability?

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Question No. 2      How does your agency adapt to the legal limitations on the actions which can be taken toward identified officers?

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Question No. 3      What alternatives has your agency adopted to reduce liabilities caused by identified officers?

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Question No. 4      How does society's expectation of you affect your agency's actions?

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Question No. 5      How do you expect your answers to Questions No. 1 through 4 to change between now and the year 2004?

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Commission on Peace Officer Standards and Training  
Command College  
Civil Liability Study Questionnaire

Please circle number of sworn personnel: 1-25 25-50 50-500 500+

Please answer the following questions with short answers (use additional paper if necessary):

Question No. 1 Within your agency, how do you identify peace officers who may be a significant civil liability, for whatever reason, on or off duty, to your agency?

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Question No. 2 How does your agency adapt to the legal limitations on the actions which can be taken toward officers so identified?

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Question No. 3 What proactive alternatives have your agency adopted to reduce liabilities caused by identified officers?

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Question No. 4 How do society's expectations of your agency affect your agency's actions and proactive alternatives?

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Civil Liability Study Questionnaire

Question No. 5 What trends do you see in the areas of civil liability of an agency for its officers, identification of liability prone officers, legal limitations, proactive alternatives, and society's expectations?

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Question No. 6 What changes or events could occur, or might you expect to occur, which would alter your answers to Question Nos. 1-4? Expressed as a percentage, what do you believe is the likelihood of each change or event to actually occur within the next ten years?

A. \_\_\_\_\_ A. = %

B. \_\_\_\_\_ B. = %

C. \_\_\_\_\_ C. = %

D. \_\_\_\_\_ D. = %

E. \_\_\_\_\_ E. = %

Comments

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Civil Liability Study Questionnaire

Your Name: \_\_\_\_\_

Please answer the following questions with short answers (use additional paper if necessary):

Question No. 1 How are peace officers currently identified who may be a significant civil liability, for whatever reason, on or off duty, to a law enforcement agency?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Question No. 2 How do law enforcement agencies currently adapt to (work within) the legal limitations on the actions which can be taken toward peace officers who are so identified?

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Question No. 3 What proactive alternatives do law enforcement agencies currently adopt to reduce liabilities caused by identified officers?

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\_\_\_\_\_  
\_\_\_\_\_

Question No. 4 How do society's expectations of law enforcement agencies affect the agencies' actions and proactive alternatives?

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\_\_\_\_\_

Civil Liability Study Questionnaire

Question No. 5 What current trends do you see in the areas of civil liability of an agency for its officers, identification of liability prone officers, legal limitations which agencies can take, proactive alternatives, and society's expectations?

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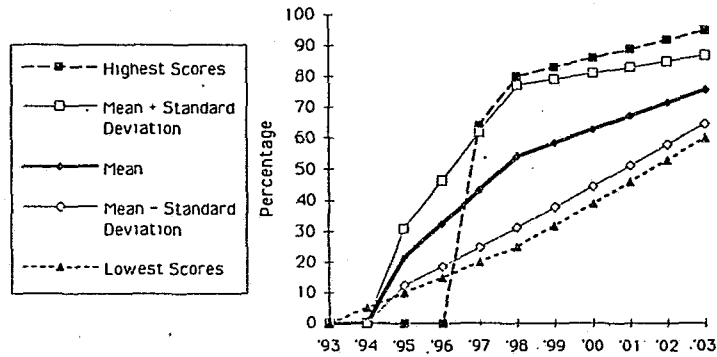
Question No. 6 What changes to a trend or what future events could occur, or might you expect to occur, which would alter your answers to Question Nos. 1-4? Expressed as a percentage, what do you believe is the likelihood of each change or event to actually occur within the next ten years?

A. \_\_\_\_\_ A.= %  
\_\_\_\_\_  
B. \_\_\_\_\_ B.= %  
\_\_\_\_\_  
C. \_\_\_\_\_ C.= %  
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D. \_\_\_\_\_ D.= %  
\_\_\_\_\_  
E. \_\_\_\_\_ E.= %  
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Comments

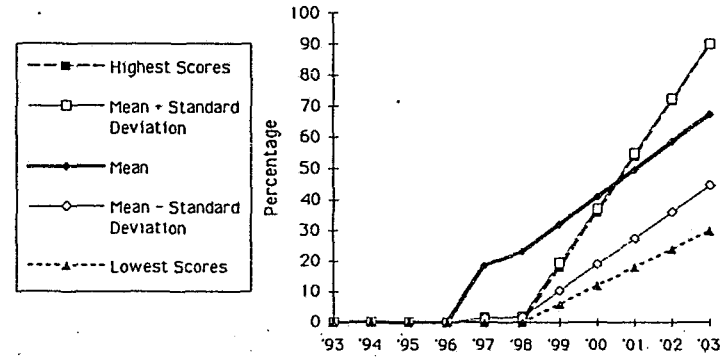
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NGT #2	Trend Change #1	Area = Budget		
Continued budgetary constraints force law enforcement agencies to significantly reduce proactive programs aimed at reduction of liability exposure, and mandated citizen complaint investigation and liability training				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1995	75	75	-10
#2	1997	30	60	-5
#3	1995	65	75	-4
#4	1995	50	75	-5
#5	1997	25	75	-5
#6	1993	80	95	-8
Mean-All Values	1995	54	76	-6
Mean-Middle 4 Values	1996	55	75	-6
Median	1995	58	75	-5
Standard Deviation	2	23	11	2
High	1997	80	95	-4
Low	1993	25	60	-10



DISCUSSION: There is very strong probability that Trend Change #1 will occur; the reduction of programs aimed at reducing exposure will, obviously, significantly hurt such programs

NGT #2	Trend Change #2	Area = Civil Liability		
The civil liability trend will swing back to the more conservative side within the next 10 years				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1998	20	90	10
#2	1999	0	80	7
#3	1997	10	80	7
#4	1998	10	30	0
#5	1996	50	75	5
#6	1994	50	50	5
Mean-All Values	1997	23	68	6
Mean-Middle 4 Values	1997	23	71	6
Median	1998	15	78	6
Standard Deviation	2	22	23	3
High	1999	50	90	10
Low	1994	0	30	0



DISCUSSION: The likelihood of Trend Change #2 occurring is very strong; a swing in the civil liability trend would significantly reduce law enforcement's exposure

NGT #2	Trend Change #3	Area = Courts		
Punitive damage awards against law enforcement administrators become a common practice of juries and courts				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1998	50	50	-3
#2	1996	30	70	-6
#3	1995	40	60	-5
#4	1993	0	0	-8
#5	1994	50	95	-1
#6	1995	20	55	-5
Mean-All Values	1995	32	55	-5
Mean-Middle 4 Values	1995	35	59	-5
Median	1995	35	58	-5
Standard Deviation	2	19	31	
High	1998	50	95	-1
Low	1993	0	0	-8

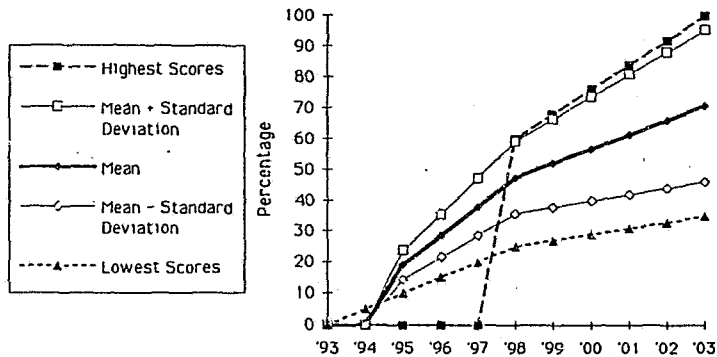
**DISCUSSION:** There was significant disagreement on the probability of Trend Change #3 occurring; if punitive awards against administrators became commonplace, it would have a negative effect on exposure yet increase effort

NGT #2	Trend Change #4	Area = Criminal		
There is a significant increase in competent (versus political) federal and state prosecutions of peace officers for violations of suspects' rights				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1998	75	80	3
#2	1995	70	80	3
#3	1998	10	70	4
#4	1998	75	80	3
#5	1995	70	80	3
#6	1995	10	70	4
Mean-All Values	1997	52	77	3
Mean-Middle 4 Values	1997	56	78	3
Median	1998	70	80	3
Standard Deviation	2	32	5	1
High	1998	75	80	4
Low	1995	10	70	3

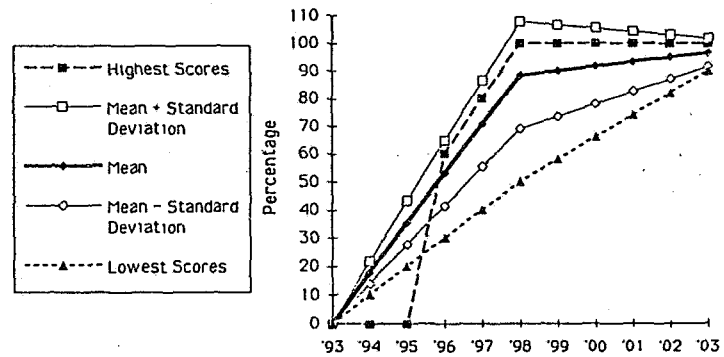
**DISCUSSION:** There is a very strong change that Trend Change #4 will occur; the effect on all officers of potential criminal prosecutions will reduce liability exposure

NGT #2	Trend Change #5	Area = Reduction		
Increasingly and in significant areas, agencies begin to implement policies which forbid their officers from becoming involved in enforcement actions, thus reducing exposure to liability				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1998	50	70	1
#2	1994	60	90	7
#3	1995	50	80	2
#4	1995	50	100	10
#5	1995	50	50	5
#6	1995	25	35	0
Mean-All Values	1995	48	71	4
Mean-Middle 4 Values	1995	50	73	4
Median	1995	50	75	4
Standard Deviation	1	12	25	4
High	1998	60	100	10
Low	1994	25	35	0

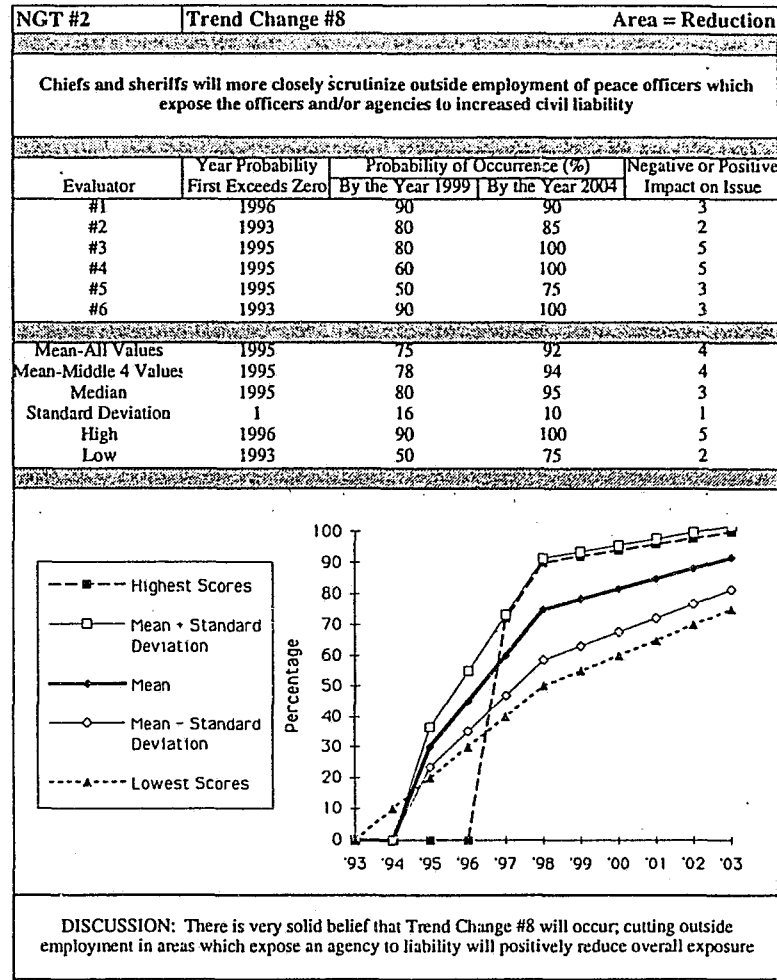
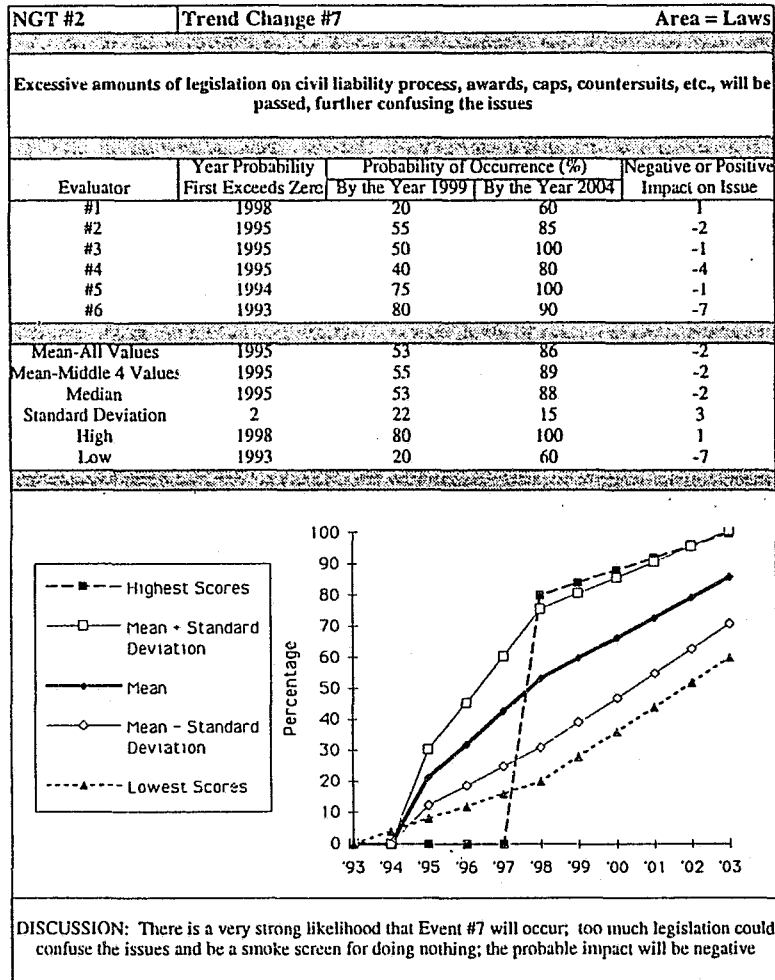


DISCUSSION: There is a very strong consensus that Trend Change #5 will occur; there was little agreement on the degree of impact, other than it would be positive

NGT #2	Trend Change #6	Area = EWS		
Once law enforcement Early Warning Systems (EWS) are in place, plaintiffs' attorneys will use EWS against law enforcement agencies and officers in court				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1996	90	90	-5
#2	1993	100	100	-4
#3	1993	50	90	-7
#4	1994	100	100	2
#5	1993	90	100	-10
#6	1993	100	100	-10
Mean-All Values	1994	88	97	-6
Mean-Middle 4 Values	1993	95	98	-7
Median	1993	95	100	-6
Standard Deviation	1	19	5	5
High	1996	100	100	2
Low	1993	50	90	-10



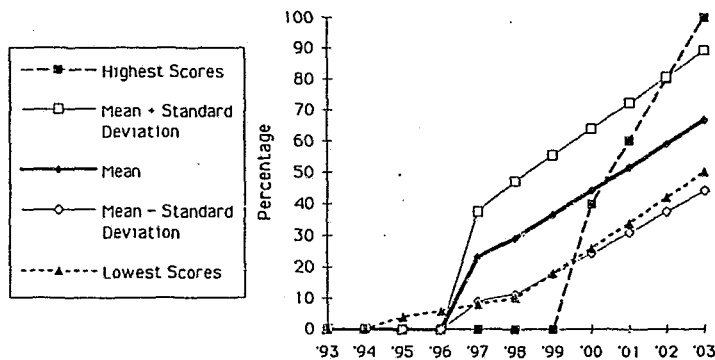
DISCUSSION: Event #6 has an extremely strong chance of occurring; if an agency's own EWS is used against it, exposure will significantly increase, and management and officers will be unhappy with the EWS



NGT #2 Trend Change #9 Area = Reverse

Peace officer associations (POA's), city attorneys and county counsels are going to become much more aggressive in their defense of peace officers and law enforcement agencies when warranted.

Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1998	20	90	5
#2	2000	25	60	4
#3	1995	60	100	3
#4	1997	10	50	8
#5	1998	20	50	1
#6	1996	40	50	7
Mean-All Values	1997	29	67	5
Mean-Middle 4 Values	1997	26	63	5
Median	1998	23	55	5
Standard Deviation	2	18	23	3
High	2000	60	100	8
Low	1995	10	50	1

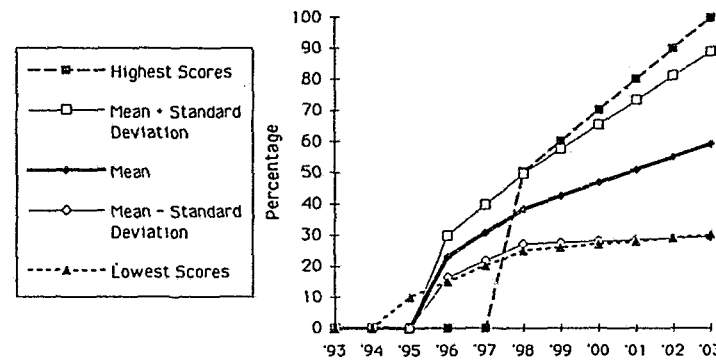


DISCUSSION: There is a strong indication that Trend Change #9 will occur, however, it is more likely around the turn of the century; if defense to lawsuits becomes more aggressive, exposure will be strongly reduced

NGT #2 Trend Change #10 Area = Discipline

Law enforcement agencies are likely to have less flexibility in their handling of disciplinary matters

Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1995	50	75	-2
#2	1996	40	40	-5
#3	1995	50	80	-3
#4	1996	40	100	-6
#5	1998	25	30	-5
#6	1996	25	30	-5
Mean-All Values	1996	38	59	-4
Mean-Middle 4 Values	1996	39	56	-5
Median	1996	40	58	-5
Standard Deviation	1	11	30	2
High	1998	50	100	-2
Low	1995	25	30	-6



DISCUSSION: There is a good chance that Trend Change #10 will occur; if law enforcement is additionally limited in dealing with problem officers, exposure to liability will increase



NGT #2	Trend Change #11	Area = Discipline		
There will be increased legal action by peace officer associations (POA's) challenging law enforcement agencies' actions taken against liability prone officers				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1996	50	75	-2
#2	1996	15	20	-2
#3	1994	50	80	-5
#4	1994	50	100	-5
#5	1994	50	75	-5
#6	1995	50	75	-4
Mean-All Values	1995	44	71	-4
Mean-Middle 4 Values	1995	50	76	-4
Median	1995	50	75	-5
Standard Deviation	1	14	27	1
High	1996	50	100	-2
Low	1994	15	20	-5

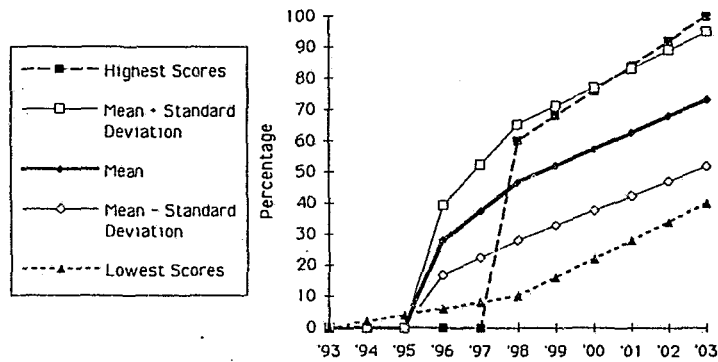
DISCUSSION: There is a strong likelihood that Trend Change #11 will occur; POA court challenges would hamper liability reduction efforts and increase exposure

NGT #2	Trend Change #12	Area = Citizen Review		
There is a significant increase in civilian oversight of law enforcement operations, personnel complaint handling, and peace officer discipline				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1998	30	70	1
#2	1995	40	50	-1
#3	1995	40	40	-2
#4	1995	60	80	0
#5	1995	50	50	-3
#6	1998	10	15	2
Mean-All Values	1996	38	51	-1
Mean-Middle 4 Values	1996	40	53	-1
Median	1995	40	50	-1
Standard Deviation	2	17	23	2
High	1998	60	80	2
Low	1995	10	15	-3

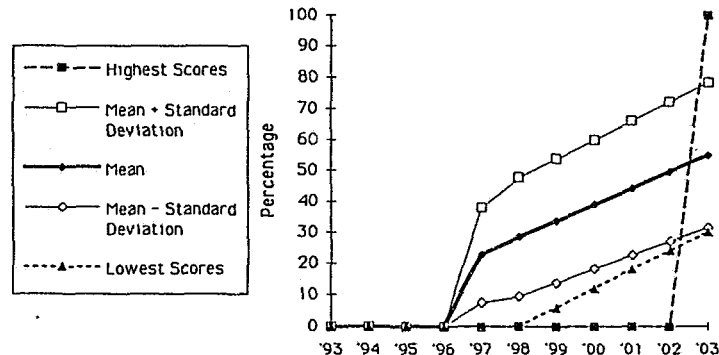
DISCUSSION: There is better than a 50-50 likelihood that Trend Change #12 will occur; there is dissension on whether a significant increase in civilian review will slightly help or hurt liability exposure

NGT #2	Trend Change #13	Area = Budget		
Economic and other pressures will cause significant regionalization of law enforcement agencies				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1998	60	80	-3
#2	1995	60	60	2
#3	1998	10	40	1
#4	1994	50	100	3
#5	1995	50	90	1
#6	1995	50	70	5
Mean-All Values	1996	47	73	2
Mean-Middle 4 Values	1996	53	75	2
Median	1995	50	75	2
Standard Deviation	2	19	22	3
High	1998	60	100	5
Low	1994	10	40	-3



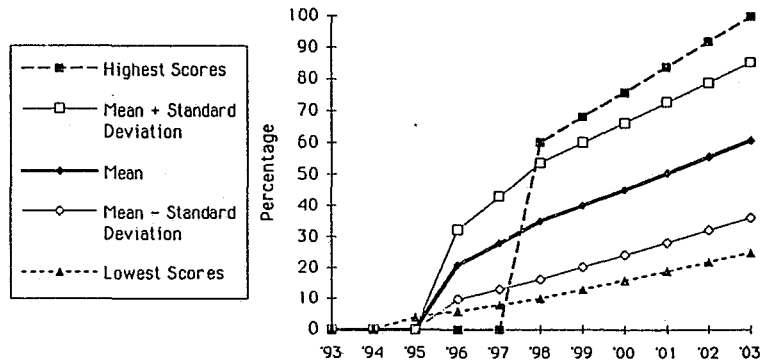
DISCUSSION: There is a very strong likelihood that Trend Change #13 will occur; while regionalization would strongly affect many areas, it is probable that it would only slightly reduce liability exposure

NGT #2	Trend Change #14	Area = Budget		
Peace officers will return to and more frequently be involved in reactive, call for service duties than in crime prevention, school resource programs, etc., because of reduced resources				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	2003	0	50	-5
#2	1996	50	50	-6
#3	1995	20	30	-2
#4	1995	50	100	-4
#5	1995	1	50	-3
#6	1998	25	50	-4
Mean-All Values	1997	28	55	-4
Mean-Middle 4 Values	1996	30	50	-4
Median	1996	25	50	-4
Standard Deviation	3	19	23	1
High	2003	50	100	-2
Low	1995	0	30	-6



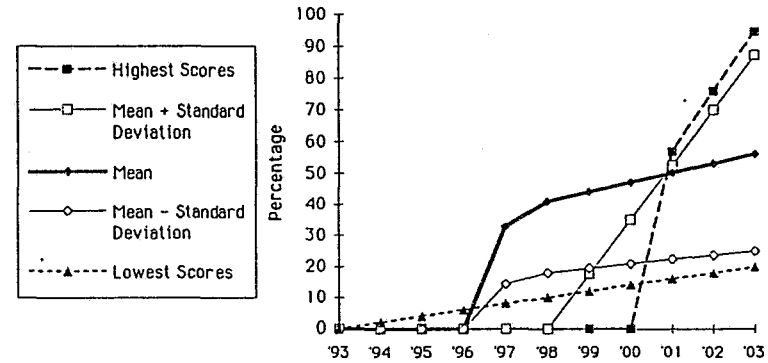
DISCUSSION: There appears to be a 50-50 chance that Trend Change #14 will occur; significant reductions in proactive efforts and a return to following the radio because of a lack of funding will hurt liability reduction efforts

NGT #2		Event #1		Area = Lawsuits & Claims		
Court decision finds both a city/county and chief/sheriff liable for failure to identify and monitor civil liability prone peace officers						
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue		
		By the Year 1999	By the Year 2004			
#1	1996	20	50	2		
#2	1998	10	25	5		
#3	1995	30	60	3		
#4	1996	50	70	5		
#5	1994	60	100	8		
#6	1997	40	60	0		
Mean-All Values	1996	35	61	4		
Mean-Middle 4 Values	1996	35	60	4		
Median	1996	35	60	4		
Standard Deviation	1	19	25	3		
High	1998	60	100	8		
Low	1994	10	25	0		



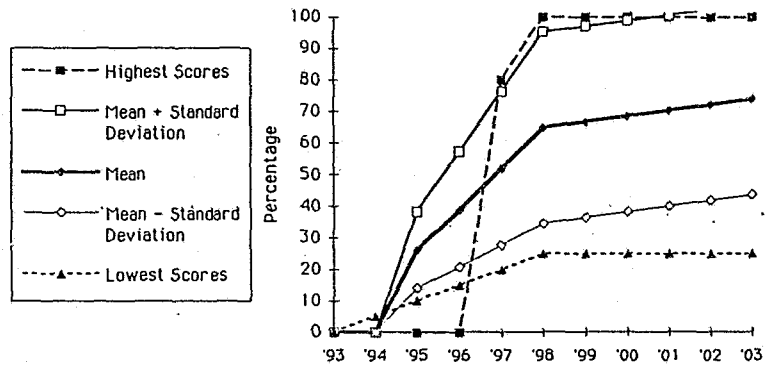
DISCUSSION: There is over a 60% probability that Event #1 will occur. Such a decision would have a significant impact and would cause law enforcement agencies and municipalities to increase their efforts, but the degree of increase would be uncertain

NGT #2		Event #2		Area = Budget		
A court awards an extremely large civil judgment against a city or county which is beyond its ability to pay, forcing it into bankruptcy						
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue		
		By the Year 1999	By the Year 2004			
#1	1996	40	60	4		
#2	1994	75	95	5		
#3	2001	0	25	3		
#4	1998	40	50	3		
#5	1994	10	20	5		
#6	1997	40	88	5		
Mean-All Values	1997	41	56	4		
Mean-Middle 4 Values	1996	41	56	4		
Median	1996	40	55	5		
Standard Deviation	3	23	31	1		
High	2001	75	95	5		
Low	1994	10	20	3		



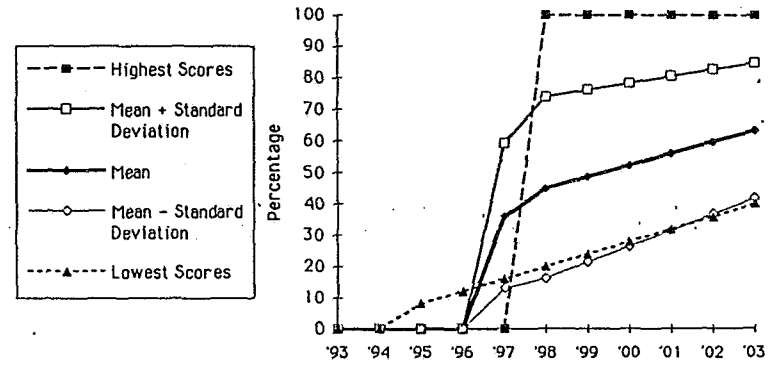
DISCUSSION: The likelihood of Event #2 occurring was uncertain but over 50%; such a bankruptcy would cause law enforcement agencies and municipalities to increase their efforts, but they would probably not want to believe it could happen to them

NGT #2	Event #3	Area = Budget			
Major budget difficulties cause virtually all agencies to limit legal counsel, claims investigation, administrative investigations, and training					
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue	
		By the Year 1999	By the Year 2004		
#1	1995	30	50	-2	
#2	1994	75	99	-5	
#3	1997	25	25	-5	
#4	1995	80	80	-5	
#5	1993	80	90	-9	
#6	1994	100	100	-6	
Mean-All Values	1995	65	74	-5	
Mean-Middle 4 Values	1995	66	80	-5	
Median	1995	78	85	-5	
Standard Deviation	1	30	30	2	
High	1997	100	100	-2	
Low	1993	25	25	-9	

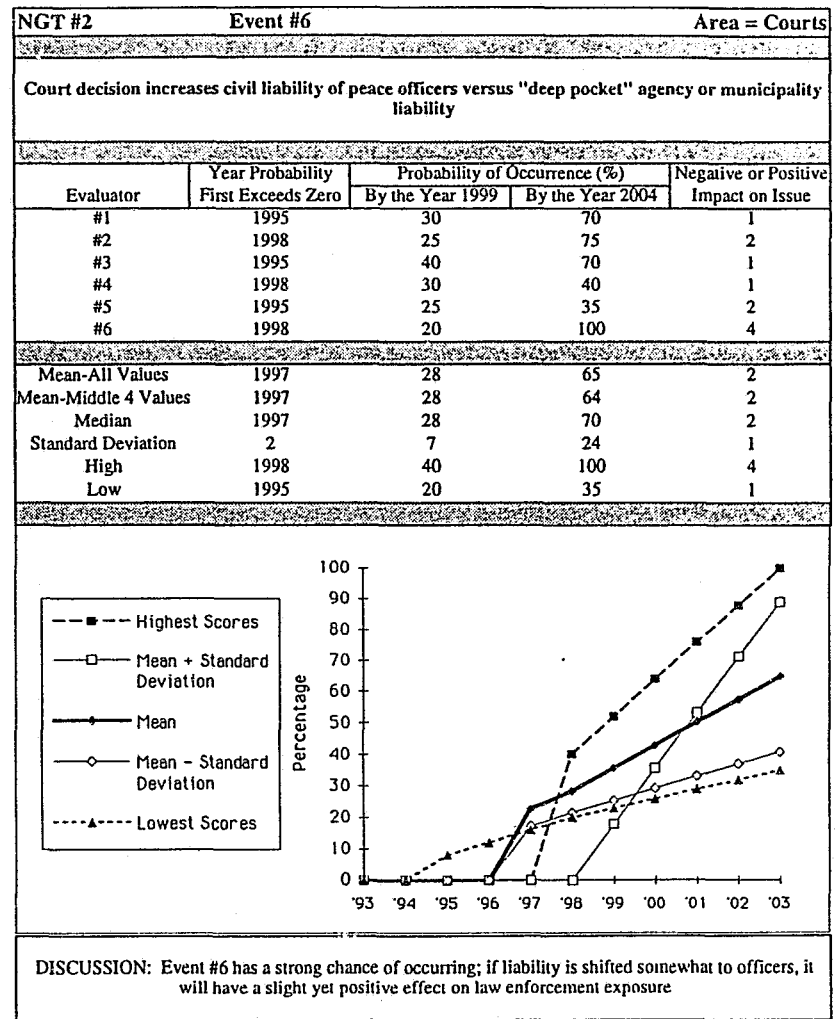
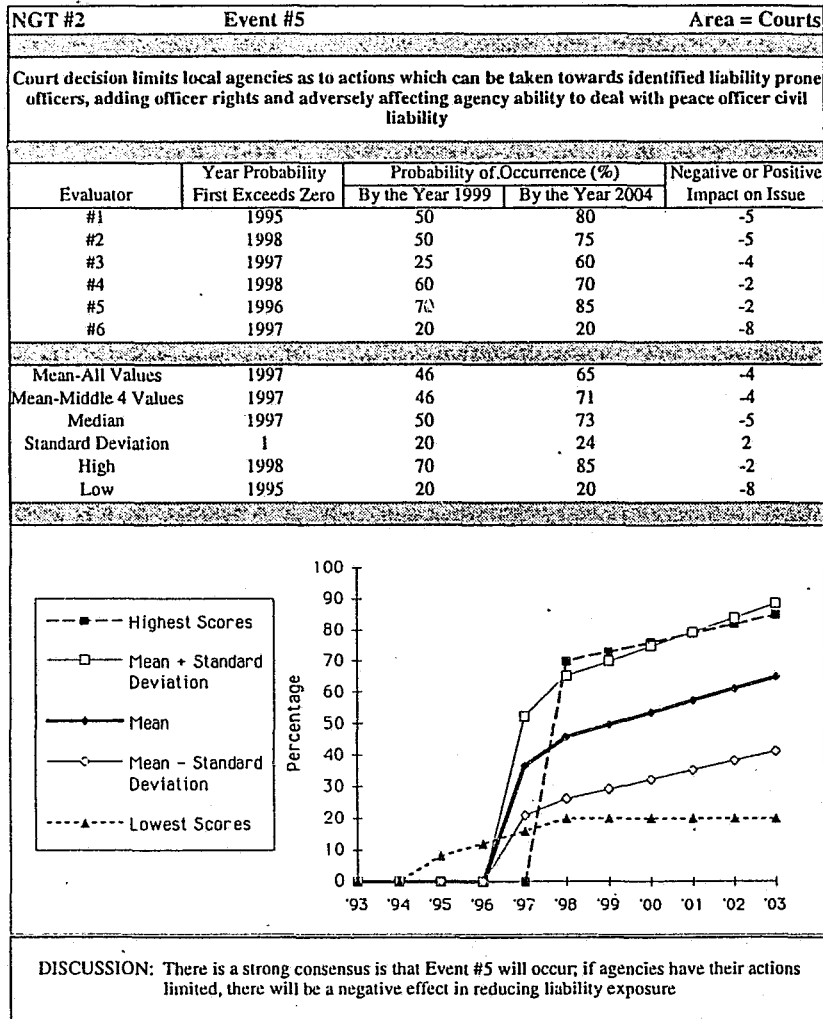


DISCUSSION: There was a strong consensus that Event #3 was likely to occur; limited funding for efforts designed to reduce civil liability exposure would have a solid, negative effect

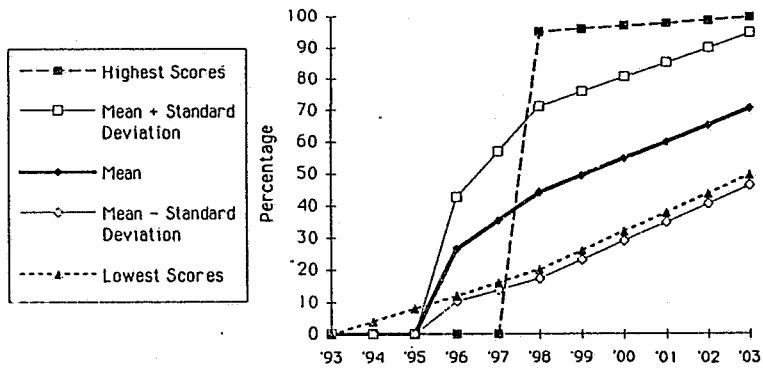
NGT #2	Event #4	Area = Abuse of Courts			
Greater and fixed penalties for frivolous lawsuits					
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue	
		By the Year 1999	By the Year 2004		
#1	1997	20	60	3	
#2	1996	50	75	5	
#3	1995	30	50	5	
#4	1998	40	55	2	
#5	1998	30	40	8	
#6	1995	100	100	7	
Mean-All Values	1997	45	63	5	
Mean-Middle 4 Values	1997	38	60	5	
Median	1997	35	58	5	
Standard Deviation	1	29	21	2	
High	1998	100	100	8	
Low	1995	20	40	2	



DISCUSSION: There is over a 50% chance that Event #4 will occur; if frivolous lawsuits are penalized, it will have a solid, positive effect toward reducing civil liability exposure

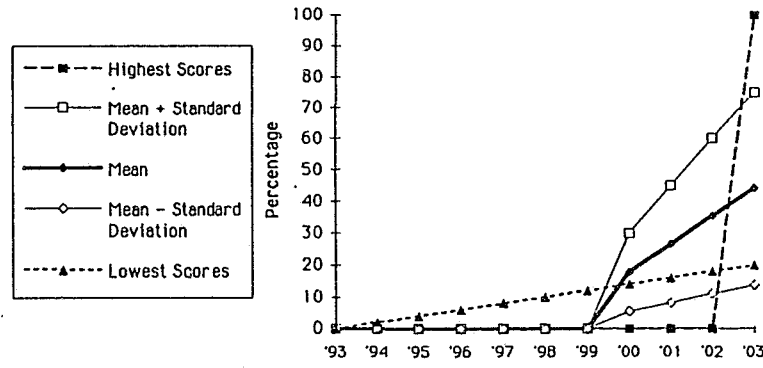


NGT #2	Event #7	Area = EWS		
Plaintiff's attorney will use agency's Early Warning System (EWS) to prove agency knew of liability prone officers and did nothing				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1996	30	50	-3
#2	1993	95	99	-5
#3	1996	30	50	-2
#4	1998	50	75	-3
#5	1997	40	51	-8
#6	1998	20	100	-4
Mean-All Values	1996	44	71	-4
Mean-Middle 4 Values	1997	38	69	-4
Median	1997	35	63	-4
Standard Deviation	2	27	24	2
High	1998	95	100	-2
Low	1993	20	50	-8



DISCUSSION: There is a strong likelihood that Event #7 will occur; if plaintiff attorneys use law enforcement's own EWS against them, it will have a negative effect on liability exposure

NGT #2	Event #8	Area = Laws		
Legislation reduces civil liability exposure of law enforcement agencies				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1998	10	20	5
#2	2000	0	25	8
#3	1999	0	50	4
#4	2001	0	50	6
#5	2003	0	21	5
#6	1996	50	100	3
Mean-All Values	2000	30	44	5
Mean-Middle 4 Values	2000	30	37	5
Median	2000	30	38	5
Standard Deviation	2	28	31	2
High	2003	50	100	8
Low	1996	10	20	3

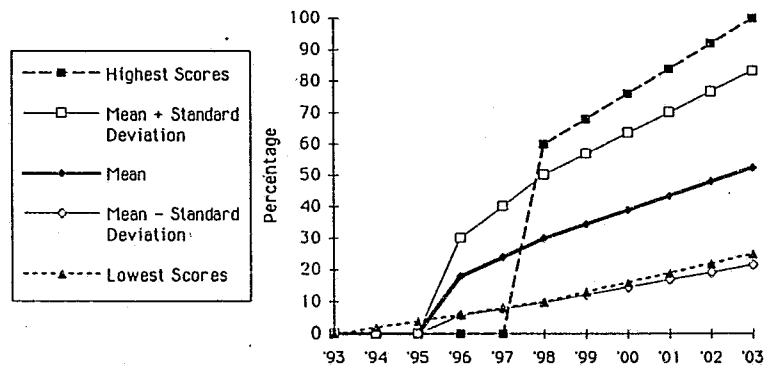


DISCUSSION: Few believe that the legislature will reduce law enforcement's liability exposure soon, although there is a chance within 10 years; if reduced, it would be a solid, positive step

**NGT #2 Event #9 Area = Hiring & Retention**

Laws enforcement candidate selection screening is hampered by legislation imposing further restrictions

Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1998	10	30	-6
#2	1995	60	80	-5
#3	1994	50	50	-2
#4	1998	20	30	-3
#5	1994	15	25	-3
#6	1998	25	100	-2
Mean-All Values	1996	30	53	-4
Mean-Middle 4 Values	1996	28	48	-3
Median	1997	23	40	-3
Standard Deviation	2	20	31	2
High	1998	60	100	-2
Low	1994	10	25	-6

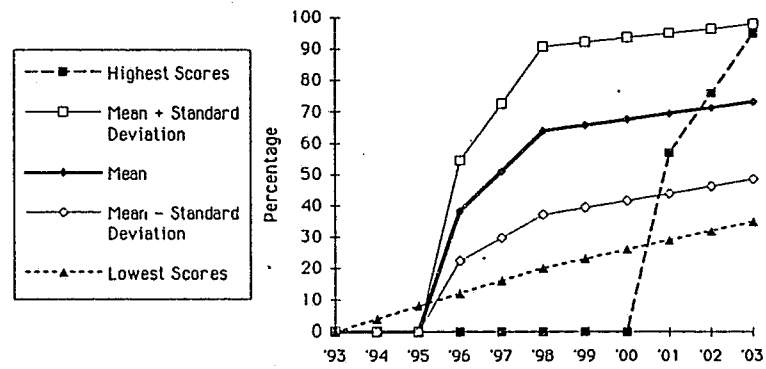


DISCUSSION: There is little consensus on Event #9 occurring; overall, it has about a 50-50 chance; if employment screening is limited, it will negatively affect law enforcement's liability exposure

**NGT #2 Event #10 Area = Reduction**

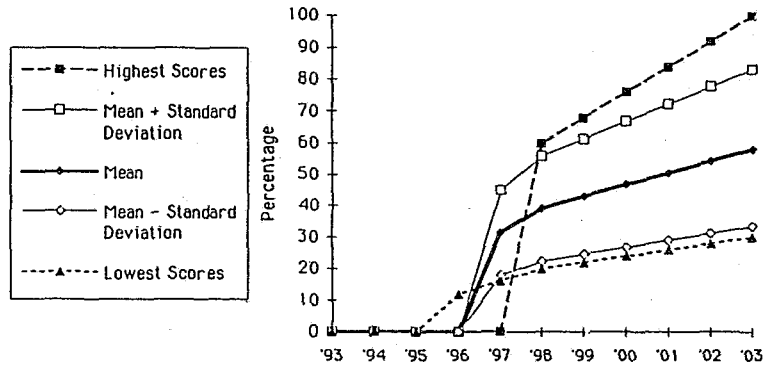
Government decides to reduce law enforcement services and actions in areas of high civil liability exposure (i.e., vehicle pursuits almost totally eliminated)

Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1995	60	90	4
#2	1994	75	95	5
#3	1998	20	35	2
#4	2001	0	50	5
#5	1994	90	90	3
#6	1995	75	80	9
Mean-All Values	1996	64	73	5
Mean-Middle 4 Values	1996	64	78	4
Median	1995	75	85	5
Standard Deviation	3	27	25	2
High	2001	90	95	9
Low	1994	20	35	2



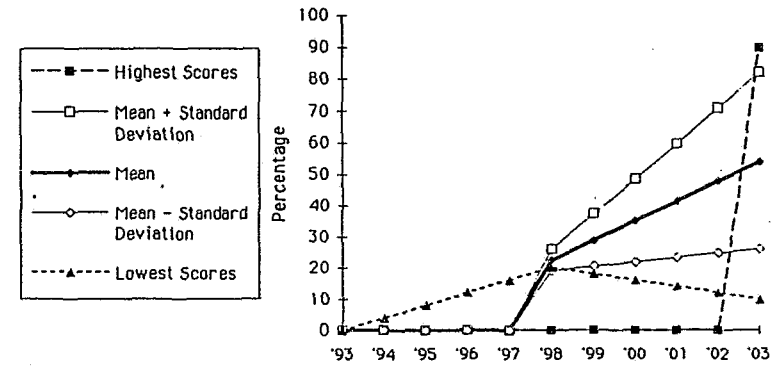
DISCUSSION: The only consensus on Event #10 is that there is a very strong likelihood that it will occur; the question is when; if law enforcement reduces high liability services, liability exposure will be reduced

NGT #2		Event #11		Area = Training	
State of California mandates retraining of peace officers identified as liability prone in the areas of officer involved traffic collisions, use of force (UOF), and pursuits					
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue	
		By the Year 1999	By the Year 2004		
#1	1996	50	70	2	
#2	1998	20	40	2	
#3	1997	35	60	3	
#4	1998	50	50	-1	
#5	1996	20	30	3	
#6	1996	60	100	3	
Mean-All Values	1997	39	58	2	
Mean-Middle 4 Values	1997	39	55	3	
Median	1997	43	55	3	
Standard Deviation	1	17	25	2	
High	1998	60	100	3	
Low	1996	20	30	-1	



DISCUSSION: There is better than a 50-50 chance Event #11 will occur; if training is mandated, a strong consensus is that it will reduce exposure somewhat

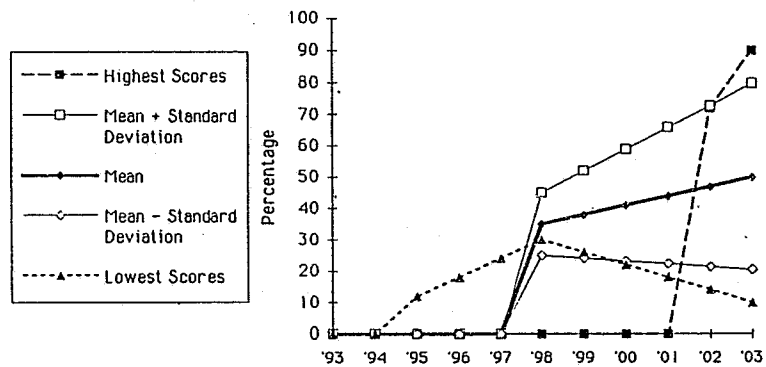
NGT #2		Event #12		Area = Miscellaneous	
Large numbers of crack, nutrient starved and alcohol syndrome babies become psychologically unbalanced teenagers; social/civil unrest between haves and have nots occurs; society condones excessive force					
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue	
		By the Year 1999	By the Year 2004		
#1	1998	20	90	2	
#2	1998	25	50	-2	
#3	1999	0	60	5	
#4	2001	0	75	5	
#5	2003	0	10	2	
#6	2001	0	40	0	
Mean-All Values	2000	23	54	2	
Mean-Middle 4 Values	2000	23	56	2	
Median	2000	23	55	2	
Standard Deviation	2	4	28	3	
High	2003	25	90	5	
Low	1998	20	10	-2	



DISCUSSION: There is over a 50% probability that Event #12 will occur, but not within 5 years; if there is a significant change and division in society as predicted, liability exposure may decrease in importance

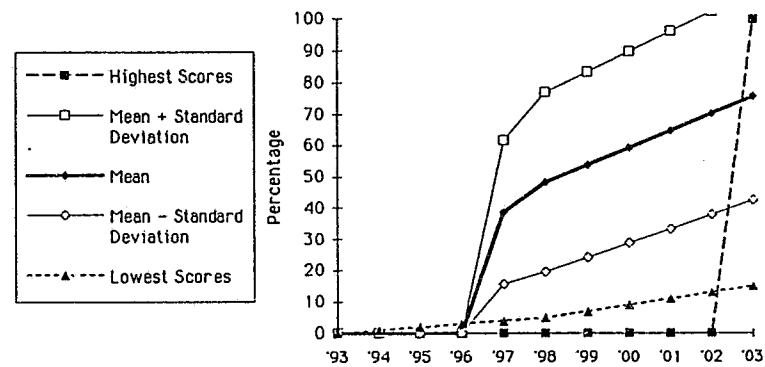


NGT #2	Event #13	Area = Discipline		
Legislation provides for public disclosure of peace officers' personnel and discipline records				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1995	50	90	1
#2	2002	0	10	-2
#3	1999	0	40	-5
#4	1998	30	40	-2
#5	1996	30	40	-5
#6	1996	30	80	0
Mean-All Values	1998	35	50	-2
Mean-Middle 4 Values	1997	35	50	-2
Median	1997	30	40	-2
Standard Deviation	3	10	30	2
High	2002	50	90	1
Low	1995	30	10	-5



DISCUSSION: There is a 50-50 chance of Event #13 occurring toward the end of the century; if officer records are disclosed, there would be a somewhat negative impact on exposure

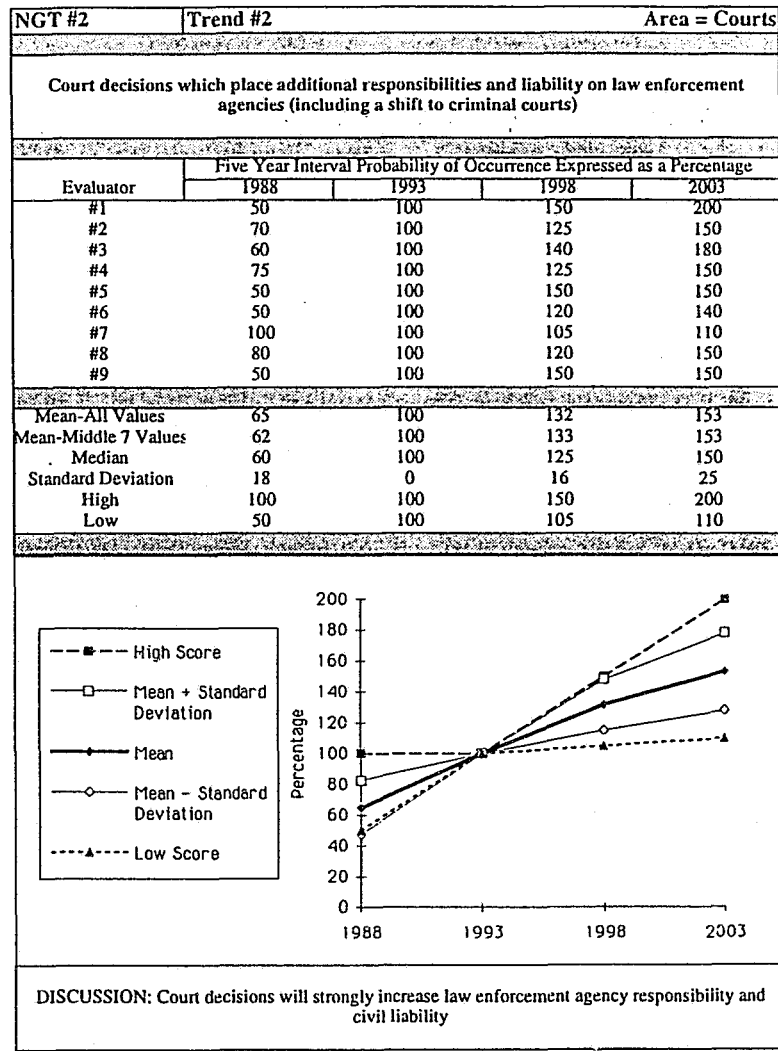
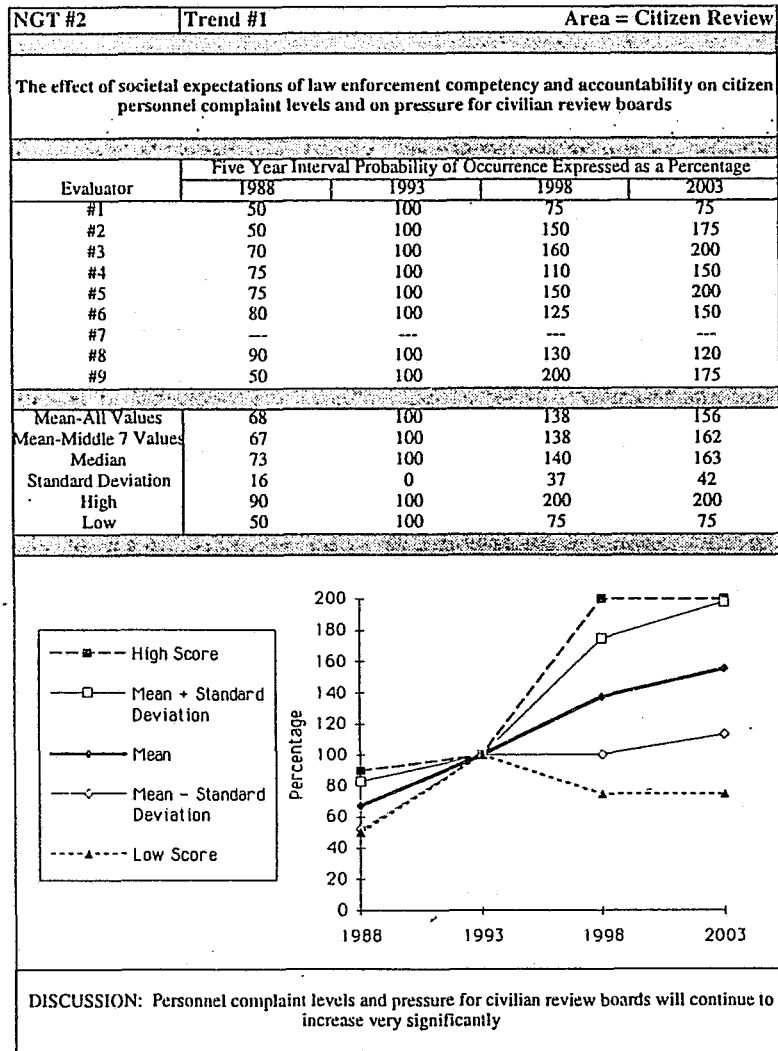
NGT #2	Event #14	Area = Use of Force		
A significant, non-lethal weapon is developed and implemented to give peace officers more alternatives in use of force (UOF) situations where lethal force is currently employed				
Evaluator	Year Probability First Exceeds Zero	Probability of Occurrence (%)		Negative or Positive Impact on Issue
		By the Year 1999	By the Year 2004	
#1	1998	20	60	9
#2	1993	75	90	1
#3	2003	5	15	4
#4	1996	60	100	7
#5	1995	70	90	5
#6	1997	60	100	10
Mean-All Values	1997	48	76	6
Mean-Middle 4 Values	1997	53	85	6
Median	1997	60	90	6
Standard Deviation	3	29	33	3
High	2003	75	100	10
Low	1993	5	15	1



DISCUSSION: The consensus is strong that Event #14 will occur; a new, non-lethal alternative weapon would significantly reduce exposure

### Event - Cross Impact Analysis Matrix (14 Events)

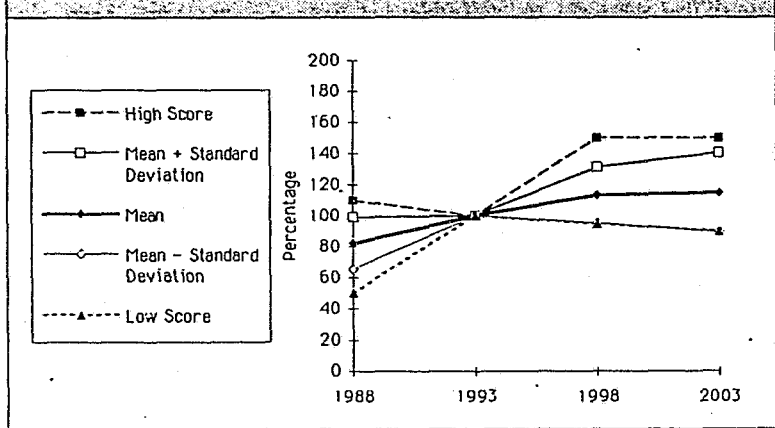
Initial Probability of the Event (As a Percentage)	The Predicted Actual Change ( $\Delta$ =) and the Probable Actual Change ( $x P$ 7=)														Final Probability of the Event (As a Percentage)
	to the Probability of the Event in the Left Column Occurring, Caused by the Event Below Occurring														
	Event #1	Event #2	Event #3	Event #4	Event #5	Event #6	Event #7	Event #8	Event #9	Event #10	Event #11	Event #12	Event #13	Event #14	
Event #1	$\Delta$ = 6%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 3%	$\Delta$ = -2%	$\Delta$ = 12%	$\Delta$ = -6%	$\Delta$ = 4%	$\Delta$ = -4%	$\Delta$ = 3%	$\Delta$ = 2%	$\Delta$ = 7%	$\Delta$ = -6%	Event #1 = 72%
P1= 61%	$x P$ 2= 3%	$x P$ 3= 0%	$x P$ 4= 0%	$x P$ 5= 2%	$x P$ 6= -1%	$x P$ 7= 9%	$x P$ 8= -3%	$x P$ 9= 2%	$x P$ 10= -3%	$x P$ 11= 2%	$x P$ 12= 1%	$x P$ 13= 4%	$x P$ 14= -5%		
Event #2	$\Delta$ = 10%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = -7%	$\Delta$ = 7%	$\Delta$ = -13%	$\Delta$ = 3%	$\Delta$ = -4%	$\Delta$ = -6%	$\Delta$ = 2%	$\Delta$ = 6%	$\Delta$ = -5%	Event #2 = 52%
P2= 56%	$x P$ 1= 6%	$x P$ 3= 0%	$x P$ 4= 0%	$x P$ 5= 0%	$x P$ 6= -5%	$x P$ 7= 5%	$x P$ 8= -6%	$x P$ 9= 2%	$x P$ 10= -3%	$x P$ 11= -3%	$x P$ 12= 1%	$x P$ 13= 3%	$x P$ 14= -4%		
Event #3	$\Delta$ = 13%	$\Delta$ = -3%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = -3%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	Event #3 = 79%
P3= 74%	$x P$ 1= 8%	$x P$ 2= -2%	$x P$ 4= 0%	$x P$ 5= 0%	$x P$ 6= 0%	$x P$ 7= 0%	$x P$ 8= -1%	$x P$ 9= 0%	$x P$ 10= 0%	$x P$ 11= 0%	$x P$ 12= 0%	$x P$ 13= 0%	$x P$ 14= 0%		
Event #4	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	Event #4 = 63%
P4= 63%	$x P$ 1= 0%	$x P$ 2= 0%	$x P$ 3= 0%	$x P$ 5= 0%	$x P$ 6= 0%	$x P$ 7= 0%	$x P$ 8= 0%	$x P$ 9= 0%	$x P$ 10= 0%	$x P$ 11= 0%	$x P$ 12= 0%	$x P$ 13= 0%	$x P$ 14= 0%		
Event #5	$\Delta$ = 5%	$\Delta$ = -6%	$\Delta$ = -2%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = -1%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 4%	$\Delta$ = -2%	$\Delta$ = -5%	$\Delta$ = 0%	$\Delta$ = -4%	$\Delta$ = 0%	Event #5 = 58%
P5= 65%	$x P$ 1= 3%	$x P$ 2= -3%	$x P$ 3= -1%	$x P$ 4= 0%	$x P$ 6= -1%	$x P$ 7= 0%	$x P$ 8= 0%	$x P$ 9= 2%	$x P$ 10= -1%	$x P$ 11= -3%	$x P$ 12= 0%	$x P$ 13= -2%	$x P$ 14= 0%		
Event #6	$\Delta$ = 0%	$\Delta$ = -21%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = -6%	$\Delta$ = 5%	$\Delta$ = 3%	$\Delta$ = 0%	$\Delta$ = 7%	$\Delta$ = 0%	$\Delta$ = 6%	$\Delta$ = 6%	$\Delta$ = 6%	Event #6 = 64%
P6= 65%	$x P$ 1= 0%	$x P$ 2= -12%	$x P$ 3= 0%	$x P$ 4= 0%	$x P$ 5= 0%	$x P$ 7= -4%	$x P$ 8= 2%	$x P$ 9= 2%	$x P$ 10= 0%	$x P$ 11= 4%	$x P$ 12= 0%	$x P$ 13= 3%	$x P$ 14= 5%		
Event #7	$\Delta$ = 14%	$\Delta$ = 10%	$\Delta$ = 2%	$\Delta$ = -2%	$\Delta$ = 3%	$\Delta$ = -3%	$\Delta$ = 6%	$\Delta$ = 4%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 10%	$\Delta$ = 6%	$\Delta$ = 6%	Event #7 = 100%
P7= 71%	$x P$ 1= 9%	$x P$ 2= 6%	$x P$ 3= 1%	$x P$ 4= -1%	$x P$ 5= 2%	$x P$ 6= -2%	$x P$ 8= 3%	$x P$ 9= 2%	$x P$ 10= 0%	$x P$ 11= 0%	$x P$ 12= 0%	$x P$ 13= 5%	$x P$ 14= 5%		
Event #8	$\Delta$ = 4%	$\Delta$ = 10%	$\Delta$ = 3%	$\Delta$ = 0%	$\Delta$ = -4%	$\Delta$ = 8%	$\Delta$ = 8%	$\Delta$ = 5%	$\Delta$ = 4%	$\Delta$ = 8%	$\Delta$ = 0%	$\Delta$ = 5%	$\Delta$ = 0%	$\Delta$ = 0%	Event #8 = 75%
P8= 44%	$x P$ 1= 2%	$x P$ 2= 6%	$x P$ 3= 2%	$x P$ 4= 0%	$x P$ 5= -3%	$x P$ 6= 5%	$x P$ 7= 6%	$x P$ 9= 3%	$x P$ 10= 3%	$x P$ 11= 5%	$x P$ 12= 0%	$x P$ 13= 3%	$x P$ 14= 0%		
Event #9	$\Delta$ = 7%	$\Delta$ = 5%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	Event #9 = 60%
P9= 53%	$x P$ 1= 4%	$x P$ 2= 3%	$x P$ 3= 0%	$x P$ 4= 0%	$x P$ 5= 0%	$x P$ 6= 0%	$x P$ 7= 0%	$x P$ 8= 0%	$x P$ 10= 0%	$x P$ 11= 0%	$x P$ 12= 0%	$x P$ 13= 0%	$x P$ 14= 0%		
Event #10	$\Delta$ = 7%	$\Delta$ = 8%	$\Delta$ = 8%	$\Delta$ = 0%	$\Delta$ = 5%	$\Delta$ = 0%	$\Delta$ = 4%	$\Delta$ = -5%	$\Delta$ = 8%	$\Delta$ = -6%	$\Delta$ = 0%	$\Delta$ = 1%	$\Delta$ = -4%	$\Delta$ = -4%	Event #10 = 90%
P10= 73%	$x P$ 1= 4%	$x P$ 2= 4%	$x P$ 3= 6%	$x P$ 4= 0%	$x P$ 5= 3%	$x P$ 6= 0%	$x P$ 7= 3%	$x P$ 8= -2%	$x P$ 9= 4%	$x P$ 11= -3%	$x P$ 12= 0%	$x P$ 13= 1%	$x P$ 14= -3%		
Event #11	$\Delta$ = 9%	$\Delta$ = 12%	$\Delta$ = 5%	$\Delta$ = 0%	$\Delta$ = 6%	$\Delta$ = 0%	$\Delta$ = 13%	$\Delta$ = 4%	$\Delta$ = 13%	$\Delta$ = -2%	$\Delta$ = 1%	$\Delta$ = 0%	$\Delta$ = 4%	$\Delta$ = 4%	Event #11 = 98%
P11= 58%	$x P$ 1= 5%	$x P$ 2= 7%	$x P$ 3= 4%	$x P$ 4= 0%	$x P$ 5= 4%	$x P$ 6= 0%	$x P$ 7= 9%	$x P$ 8= 2%	$x P$ 9= 7%	$x P$ 10= -1%	$x P$ 12= 1%	$x P$ 13= 0%	$x P$ 14= 3%		
Event #12	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 1%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	Event #12 = 54%
P12= 54%	$x P$ 1= 0%	$x P$ 2= 0%	$x P$ 3= 0%	$x P$ 4= 0%	$x P$ 5= 0%	$x P$ 6= 0%	$x P$ 7= 0%	$x P$ 8= 0%	$x P$ 9= 0%	$x P$ 10= 0%	$x P$ 11= 0%	$x P$ 13= 0%	$x P$ 14= 0%		
Event #13	$\Delta$ = 14%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 4%	$\Delta$ = 12%	$\Delta$ = 4%	$\Delta$ = 3%	$\Delta$ = 4%	$\Delta$ = 0%	$\Delta$ = 6%	$\Delta$ = 0%	$\Delta$ = 6%	$\Delta$ = 6%	Event #13 = 83%
P13= 50%	$x P$ 1= 9%	$x P$ 2= 0%	$x P$ 3= 0%	$x P$ 4= 0%	$x P$ 5= 3%	$x P$ 6= 8%	$x P$ 7= 3%	$x P$ 8= 1%	$x P$ 9= 2%	$x P$ 10= 0%	$x P$ 11= 3%	$x P$ 12= 0%	$x P$ 14= 5%		
Event #14	$\Delta$ = 4%	$\Delta$ = 8%	$\Delta$ = 4%	$\Delta$ = 0%	$\Delta$ = 4%	$\Delta$ = 2%	$\Delta$ = 0%	$\Delta$ = 0%	$\Delta$ = 2%	$\Delta$ = 8%	$\Delta$ = 4%	$\Delta$ = 2%	$\Delta$ = 0%	$\Delta$ = 0%	Event #14 = 100%
P14= 76%	$x P$ 1= 2%	$x P$ 2= 4%	$x P$ 3= 3%	$x P$ 4= 0%	$x P$ 5= 3%	$x P$ 6= 1%	$x P$ 7= 0%	$x P$ 8= 0%	$x P$ 9= 1%	$x P$ 10= 6%	$x P$ 11= 2%	$x P$ 12= 1%	$x P$ 13= 0%		



NGT #2 Trend #3 Area = Discipline

Additions to peace officer rights and court decisions which increase the level of difficulty to discipline or discharge a peace officer; disciplinary discharges and penalties overturned by courts

Evaluator	Five Year Interval Probability of Occurrence Expressed as a Percentage			
	1988	1993	1998	2003
#1	95	100	105	95
#2	80	100	100	100
#3	70	100	120	140
#4	90	100	110	120
#5	50	100	150	150
#6	85	100	95	90
#7	110	100	95	90
#8	75	100	130	150
#9	85	100	115	100
Mean-All Values	82	100	113	115
Mean-Middle 7 Values	83	100	111	114
Median	85	100	110	100
Standard Deviation	17	0	18	25
High	110	100	150	150
Low	50	100	95	90

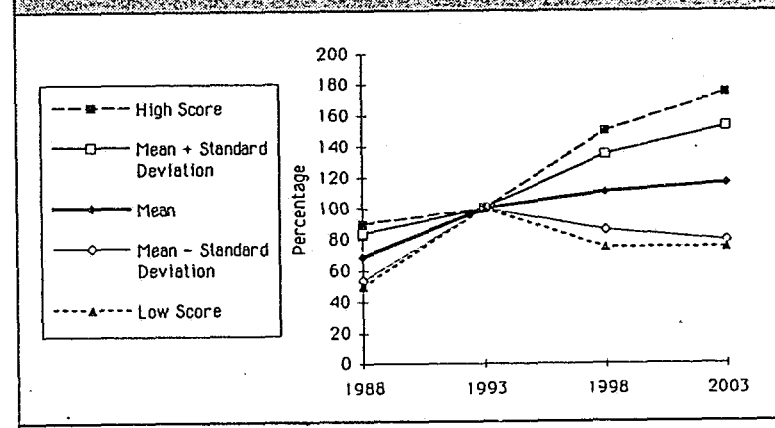


DISCUSSION: Officer rights and adverse court decisions on agency imposed discipline will continue to slightly increase

NGT #2 Trend #4 Area = Effect

Law enforcement officers, feeling the negative effect of public opinion, being fearful of taking proactive or aggressive police action

Evaluator	Five Year Interval Probability of Occurrence Expressed as a Percentage			
	1988	1993	1998	2003
#1	75	100	75	75
#2	50	100	150	175
#3	80	100	105	110
#4	70	100	150	175
#5	75	100	100	100
#6	80	100	100	105
#7	50	100	105	110
#8	90	100	110	120
#9	50	100	100	75
Mean-All Values	69	100	111	116
Mean-Middle 7 Values	69	100	110	114
Median	75	100	105	110
Standard Deviation	15	0	24	37
High	90	100	150	175
Low	50	100	75	75

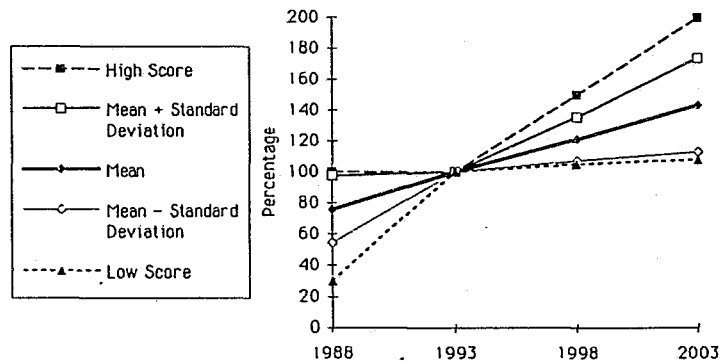


DISCUSSION: Peace officers will continue to be fearful about taking proactive or aggressive police action

**NGT #2      Trend #5      Area = Evidence**

Peace officers must not just take the correct actions; they must be able to prove they did

Evaluator	Five Year Interval Probability of Occurrence Expressed as a Percentage			
	1988	1993	1998	2003
#1	75	100	125	150
#2	80	100	125	150
#3	70	100	120	160
#4	80	100	150	200
#5	75	100	125	150
#6	98	100	105	108
#7	---	---	---	---
#8	100	100	110	120
#9	30	100	110	110
Mean-All Values	76	100	121	144
Mean-Middle 7 Values	80	100	119	140
Median	78	100	123	150
Standard Deviation	22	0	14	31
High	100	100	150	200
Low	30	100	105	108

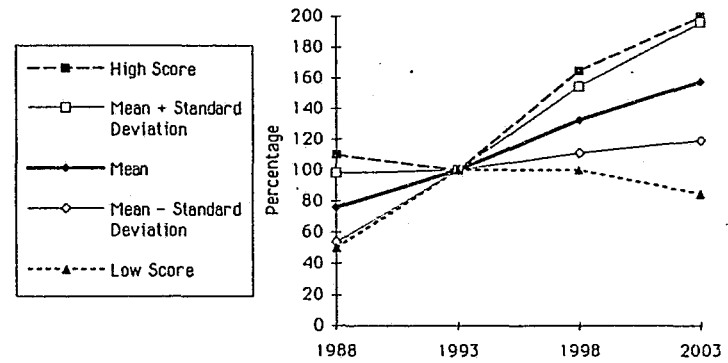


DISCUSSION: There will increasingly be the need for officers to prove they are right, not just say it

**NGT #2      Trend #6      Area = Exposure**

Liability levels and erosion of defenses based on exposure due to high risk police tasks (e.g., K-9, pursuits, shootings, Swat, UOF)

Evaluator	Five Year Interval Probability of Occurrence Expressed as a Percentage			
	1988	1993	1998	2003
#1	50	100	150	200
#2	50	100	150	175
#3	80	100	120	165
#4	100	100	165	200
#5	75	100	125	150
#6	90	100	105	110
#7	110	100	100	85
#8	80	100	140	175
#9	50	100	140	160
Mean-All Values	76	100	133	158
Mean-Middle 7 Values	75	100	133	162
Median	80	100	140	165
Standard Deviation	22	0	22	38
High	110	100	165	200
Low	50	100	100	85

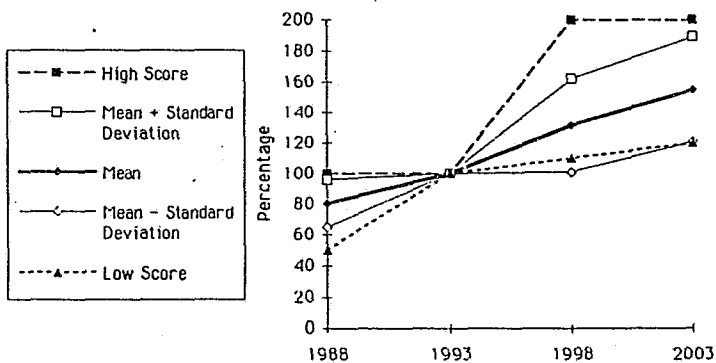


DISCUSSION: High risk law enforcement tasks will strongly increase liability exposure and make it much harder for officers and agencies to defend themselves

**NGT #2**      **Trend #7**      **Area = Identification**

Identification of liability prone officers through various means (EWS, complaints, pursuits, audits, reviews, observation, psychology, etc.)

Evaluator	Five Year Interval Probability of Occurrence Expressed as a Percentage			
	1988	1993	1998	2003
#1	90	100	110	120
#2	70	100	150	175
#3	80	100	130	180
#4	75	100	110	150
#5	100	100	150	200
#6	80	100	110	125
#7	50	100	115	125
#8	100	100	110	120
#9	80	100	200	200
Mean-All Values	81	100	132	155
Mean-Middle 7 Values	82	100	125	154
Median	80	100	115	150
Standard Deviation	16	0	31	34
High	100	100	200	200
Low	50	100	110	120

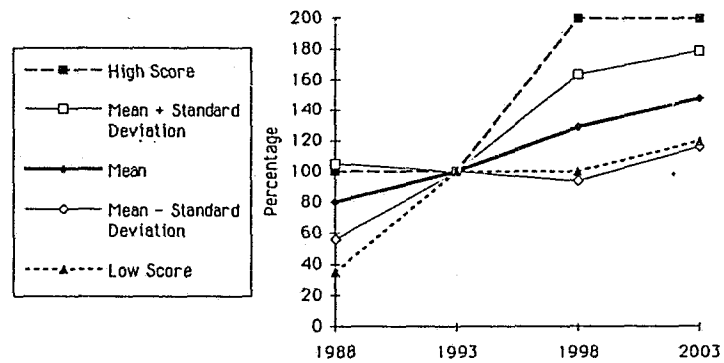


DISCUSSION: Identification of liability prone officers will continue to increase significantly

**NGT #2**      **Trend #8**      **Area = Laws**

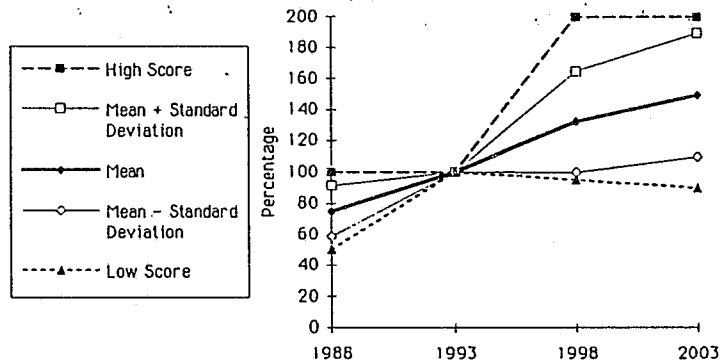
Legislation to modify civil litigation to restrict lawsuits and cap awards

Evaluator	Five Year Interval Probability of Occurrence Expressed as a Percentage			
	1988	1993	1998	2003
#1	100	100	125	130
#2	70	100	175	200
#3	95	100	110	125
#4	50	100	100	150
#5	100	100	125	150
#6	75	100	110	130
#7	35	100	105	125
#8	100	100	110	120
#9	100	100	200	200
Mean-All Values	81	100	129	148
Mean-Middle 7 Values	84	100	123	144
Median	95	100	110	130
Standard Deviation	25	0	35	31
High	100	100	200	200
Low	35	100	100	120



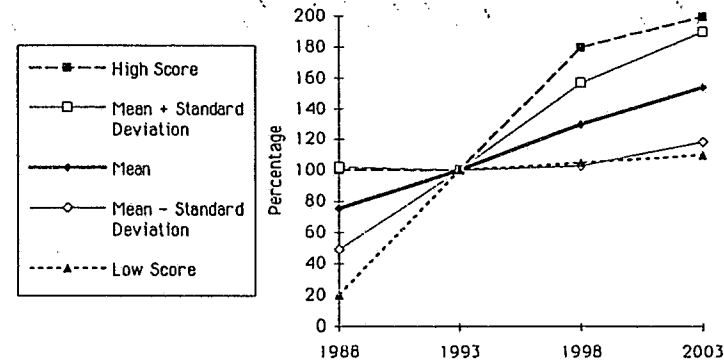
DISCUSSION: Legislation to limit civil liability will significantly increase

NGT #2	Trend #9				Area = Lawsuits & Claims
Number and level of awards/settlements in law enforcement liability claims and lawsuits					
Evaluator	Five Year Interval Probability of Occurrence Expressed as a Percentage				
	1988	1993	1998	2003	
#1	75	100	95	90	
#2	50	100	150	200	
#3	80	100	120	160	
#4	75	100	110	150	
#5	75	100	125	150	
#6	100	100	100	100	
#7	80	100	150	175	
#8	90	100	140	120	
#9	50	100	200	200	
Mean-All Values	75	100	132	149	
Mean-Middle 7 Values	75	100	128	151	
Median	75	100	125	150	
Standard Deviation	16	0	32	40	
High	100	100	200	200	
Low	50	100	95	90	



DISCUSSION: Both the number and amount of settlements and awards in liability lawsuits will continue to increase very significantly

NGT #2	Trend #10				Area = Reduction
Law enforcement agencies involved in creative (e.g., improvement contracts) and proactive (e.g., EWS) methods to reduce liability exposure					
Evaluator	Five Year Interval Probability of Occurrence Expressed as a Percentage				
	1988	1993	1998	2003	
#1	95	100	105	110	
#2	60	100	150	175	
#3	20	100	120	160	
#4	75	100	110	125	
#5	100	100	150	200	
#6	70	100	105	115	
#7	---	---	---	---	
#8	95	100	120	150	
#9	90	100	180	200	
Mean-All Values	76	100	130	154	
Mean-Middle 7 Values	81	100	126	154	
Median	83	100	120	155	
Standard Deviation	27	0	27	36	
High	100	100	180	200	
Low	20	100	105	110	



DISCUSSION: Creative methods and proactive ways to reduce liability exposure will continue to increase significantly

NGT #2	Trend #11				Area = Remediation
<b>Efforts to retrain/modify/eliminate identified liability prone officers</b>					
Five Year Interval Probability of Occurrence Expressed as a Percentage					
Evaluator	1988	1993	1998	2003	
#1	85	100	110	130	
#2	50	100	150	175	
#3	10	100	150	180	
#4	100	100	125	150	
#5	75	100	150	200	
#6	80	100	120	140	
#7	40	100	120	180	
#8	95	100	110	140	
#9	80	100	180	200	
Mean-All Values	68	100	135	166	
Mean-Middle 7 Values	72	100	132	166	
Median	80	100	125	175	
Standard Deviation	29	0	24	27	
High	100	100	180	200	
Low	10	100	110	130	

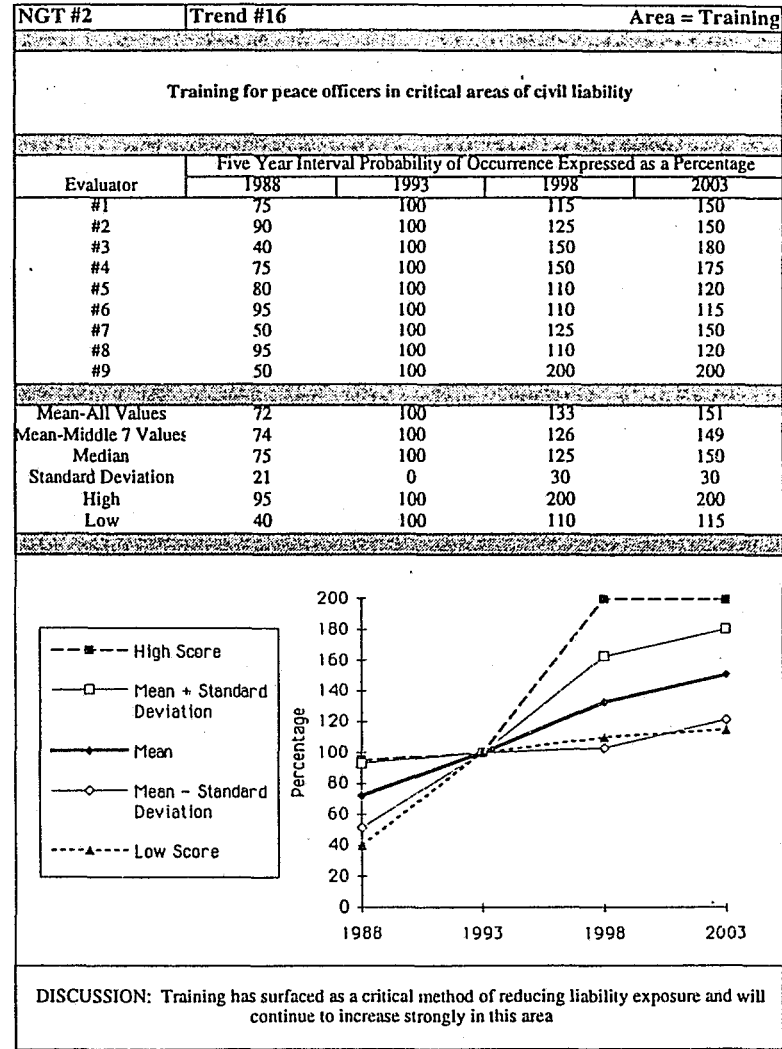
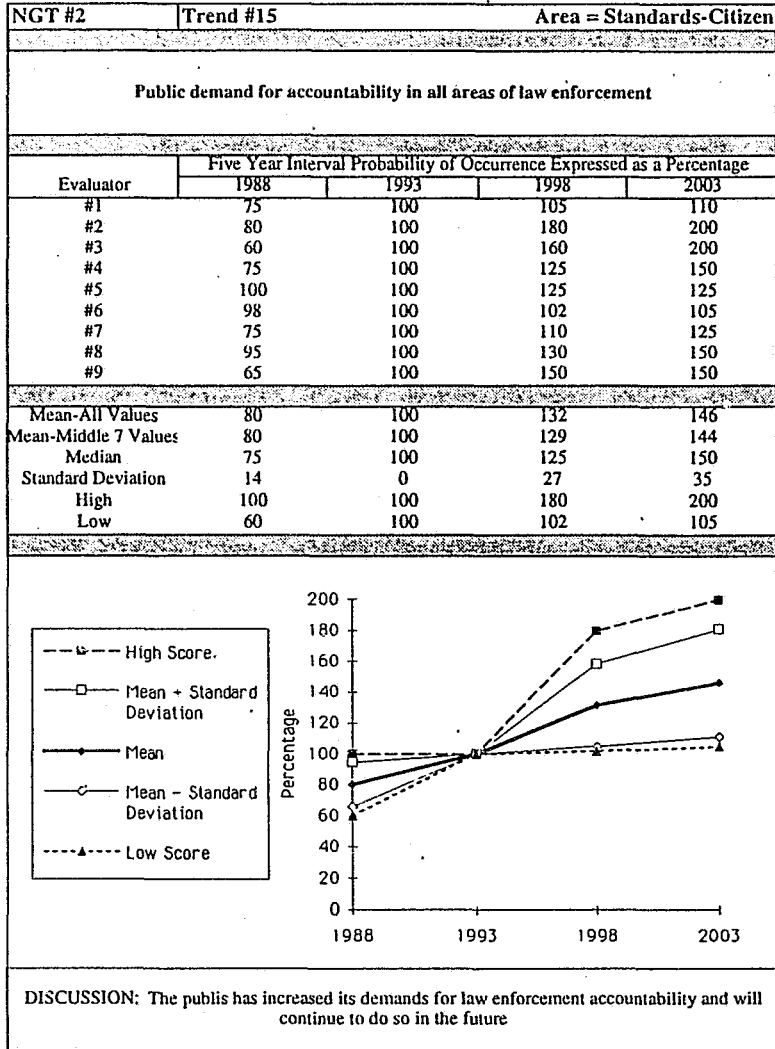
**DISCUSSION:** Retraining, remediating or eliminating liability prone officers will continue to increase very significantly

NGT #2	Trend #12				Area = Service-Budget
<b>Law enforcement resources available for proactive service and liability reductions in light of budget reductions</b>					
Five Year Interval Probability of Occurrence Expressed as a Percentage					
Evaluator	1988	1993	1998	2003	
#1	125	100	95	90	
#2	90	100	100	100	
#3	60	100	130	170	
#4	100	100	100	100	
#5	75	100	125	150	
#6	110	100	95	85	
#7	125	100	80	100	
#8	120	100	90	110	
#9	150	100	70	90	
Mean-All Values	106	100	98	111	
Mean-Middle 7 Values	106	100	98	106	
Median	110	100	95	100	
Standard Deviation	28	0	19	29	
High	150	100	130	170	
Low	60	100	70	85	

**DISCUSSION:** Resources for proactive service and liability reduction programs have remained almost static; there have been recent downturns but slight increases are expected sometime in the future.

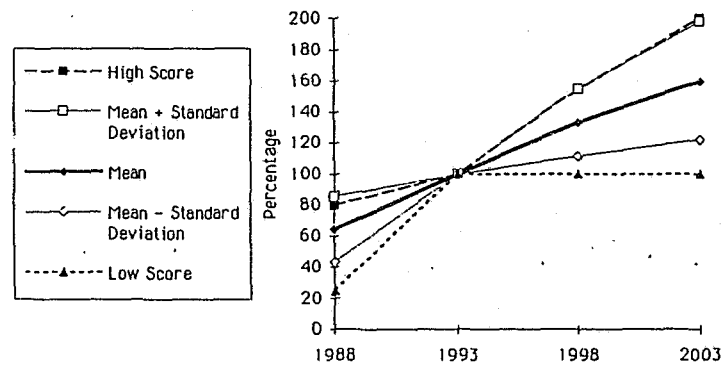




NGT #2 Trend #13 Area = Service-Type

Peace officers in the non-traditional role (i.e., C.O.P.) as problem solver (versus the role as enforcer)

Evaluator	Five Year Interval Probability of Occurrence Expressed as a Percentage			
	1988	1993	1998	2003
#1	75	100	110	120
#2	70	100	150	200
#3	30	100	150	180
#4	75	100	150	200
#5	75	100	125	150
#6	80	100	110	130
#7	25	100	155	200
#8	80	100	150	160
#9	70	100	100	100
Mean-All Values	64	100	135	160
Mean-Middle 7 Values	68	100	135	163
Median	75	100	150	160
Standard Deviation	21	0	22	38
High	80	100	155	200
Low	25	100	100	100

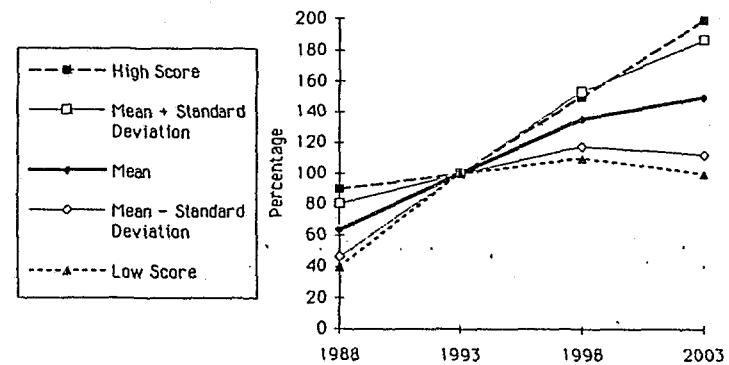


DISCUSSION: One of the sharpest increases in the past and anticipated for the future is peace officers acting in the role of problem solver

NGT #2 Trend #14 Area = Sex

Sexual harrasment in the law enforcement working environment as a source of civil liability

Evaluator	Five Year Interval Probability of Occurrence Expressed as a Percentage			
	1988	1993	1998	2003
#1	50	100	110	120
#2	50	100	150	200
#3	40	100	150	180
#4	75	100	125	125
#5	75	100	125	100
#6	80	100	110	115
#7	60	100	150	200
#8	90	100	150	160
#9	50	100	150	150
Mean-All Values	63	100	136	150
Mean-Middle 7 Values	63	100	137	150
Median	60	100	150	150
Standard Deviation	17	0	18	38
High	90	100	150	200
Low	40	100	110	100



DISCUSSION: Sexual harrasment has significantly increased as a law enforcement liability exposure and is likely to continue to increase significantly