International Municipal Lawyer's Association

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LLRMI

2024

A Look at Liability and the Importance of Training

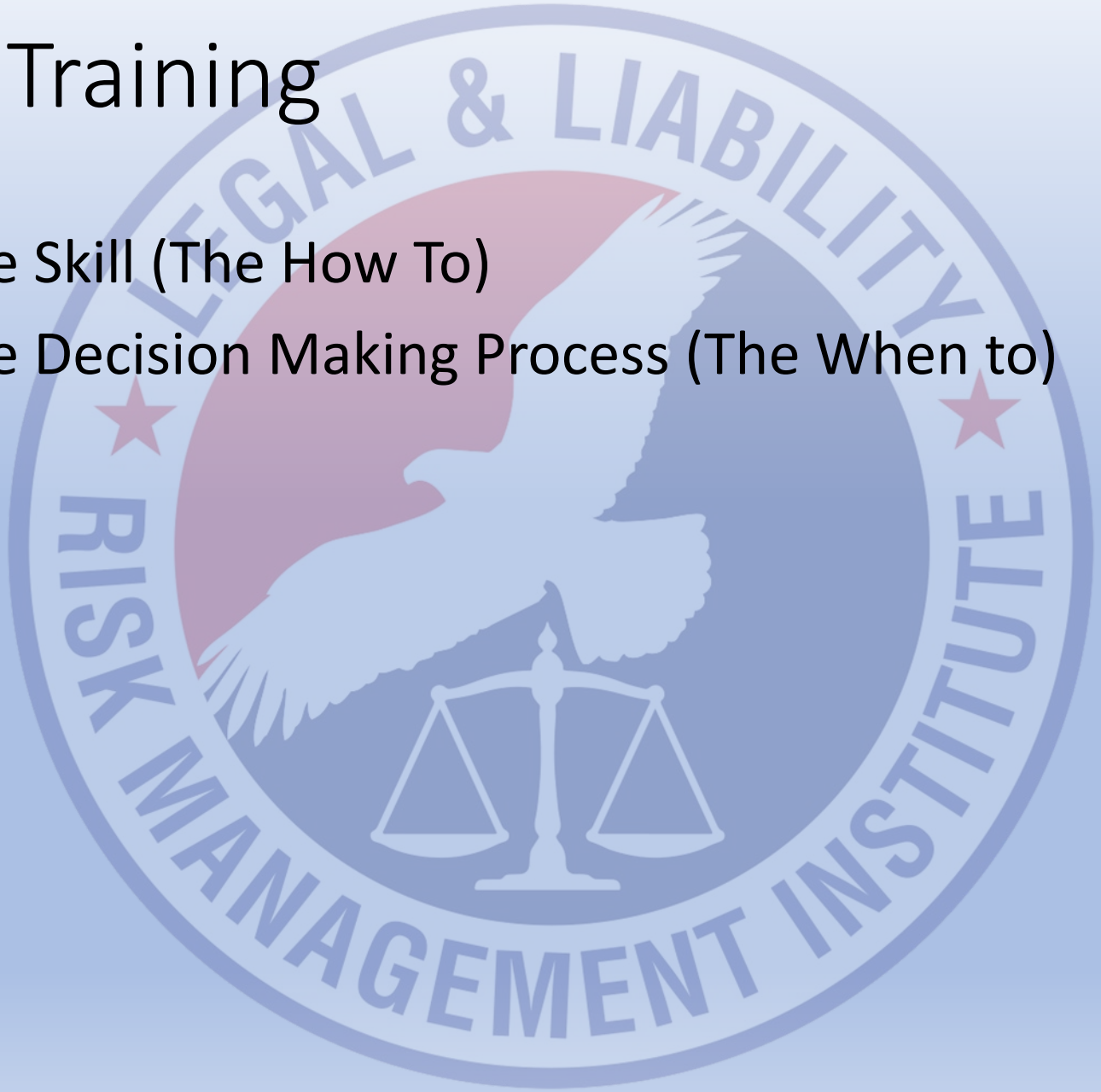


Canton v. Harris

The Federal Foundation

Types of Training

- Teaching the Skill (The How To)
- Teaching the Decision Making Process (The When to)
- Class-room
- Hands-On
- Experiential



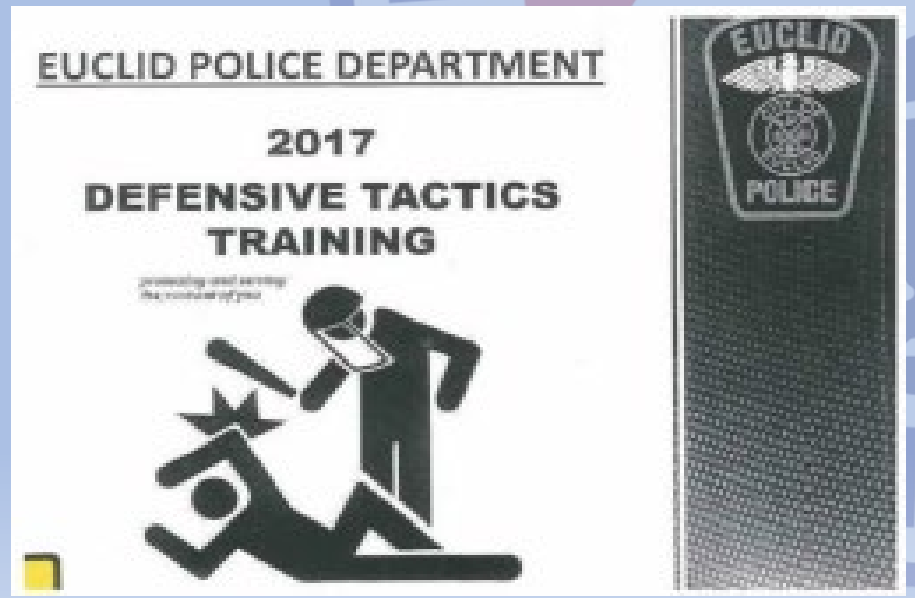
Audit the Content of Your Training

Audit your training

- In *Wright v. City of Euclid* the United States Court of Appeals found that use of force training that contained some unprofessional materials in it, could lead to agency liability both for an illegal policy as established by the training or as a failure to train or supervise.
- *Wright v. City of Euclid,* 962 F.3d 852 (6th Cir. 2020).

Take the “f” word out of Training…

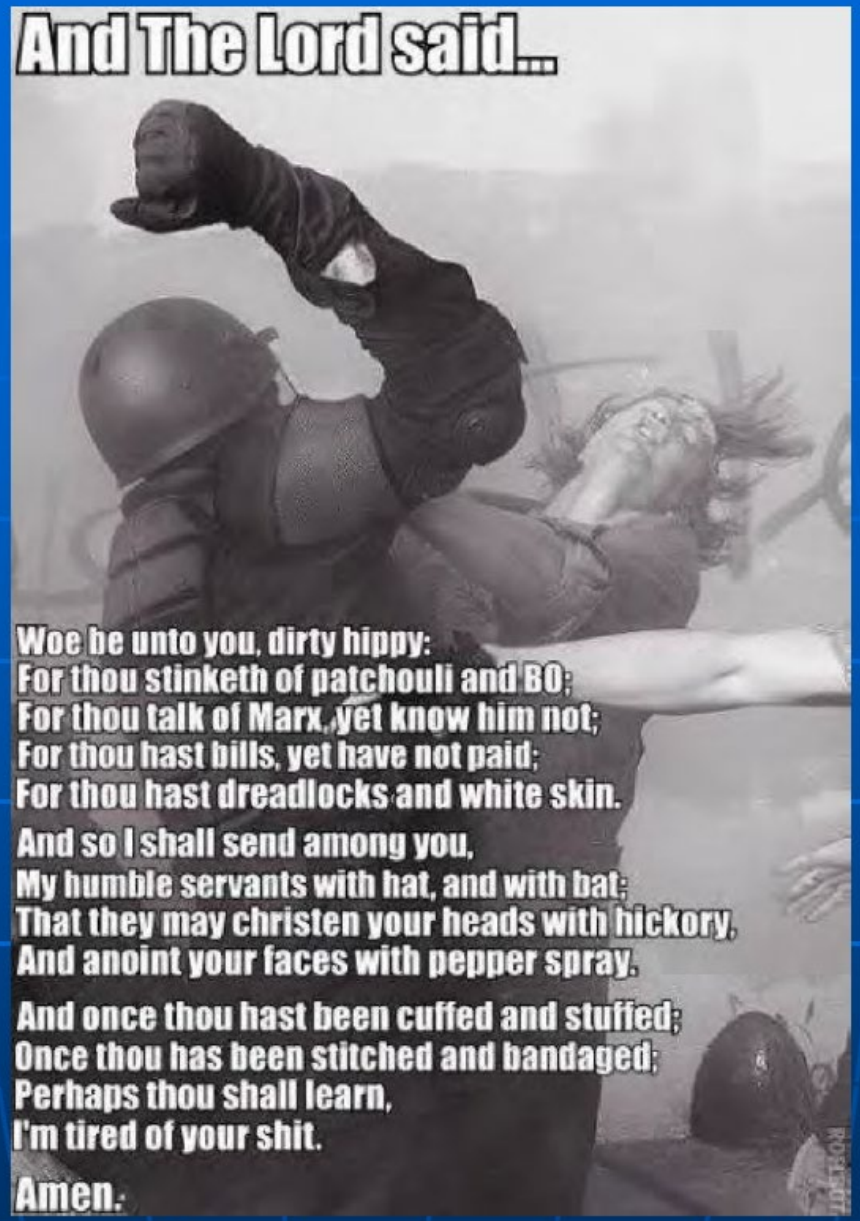
- Euclid- Chris Rock Video and…
- "protecting and serving the poop out of you."



Louisville Metro SWAT Lawsuit filing cites training

- “There is no hunting like the hunting of man and those who have hunted armed men long enough and liked it, never really care for anything else thereafter…” [Hemingway 1936 Esquire Magazine]
- A recent court filing has brought scrutiny to the quote and images in the training materials, including a picture of a bloody Black man who appears to be dead as well as a cartoonish gang member shooting a gun alongside images of drugs and money.

Portland Police-
Riot/Demonstrations



The End

Is Training Up to Date Has Science Changed

Do You Train on Excited Delirium

What does the Training Look Like?
What are the Symptoms?
Is it just an Excuse?

October 18, 2023 article

- A leading doctors group on Thursday formally withdrew its approval of a 2009 paper on “excited delirium,” a document that critics say has been used to justify excessive force by police.
- The American College of Emergency Physicians in a statement called the paper outdated and said the term excited delirium should not be used by members who testify in civil or criminal cases. The group's directors voted on the matter Thursday in Philadelphia.

Continued…

- In March, the National Association of Medical Examiners took a stand against the term, saying it should not be listed as a cause of death. Other medical groups, including the American Medical Association, had previously rejected excited delirium as a diagnosis. Critics have called it unscientific and rooted in racism.

Warrior v. Guardian

Logering v. Morrison Cty. Sheriff's Dep't, No. 23-0177 (JWB/LIB), 2023 U.S. Dist. LEXIS 78456, (D. Minn. May 5, 2023)

• The second allegation set asserts that various Defendants entered an unspecified "residence"—again, presumably Logering's—in "warrior-style" and proceeded to "kick[], stomp[], and injur[e]" Plaintiffs. (*Id.*) Plaintiffs also suggest that on this occasion—apparently the incident on August 24, 2020—Defendants entered the relevant residence "without [a] warrant," and that Defendants inflicted at least some injuries on Plaintiffs while Plaintiffs were handcuffed. (*Id.*)

French v. City of L.A., No. EDCV 20-416 JGB (SHKx), 2021 U.S. Dist. LEXIS 254452, at *18-19 (C.D. Cal. Jan. 8, 2021)

- Plaintiffs' failure to train claim is premised on its allegations that [*19] the LAPD mandates training programs, such as "warrior training," that foster irrational fear that everyone is out to kill them or that unexpected danger lurks around every corner despite the potential for officers to overreact and use excessive force. (SAC ¶ 84(c).) Plaintiffs argue that this is an affirmative policy and that they therefore need not establish a pattern of similar constitutional violations. (Opp'n at 15.) The Court rejects this argument for the reasons established above.

Jones v. City of St. Paul, No. 20-707(DSD/ECW), 2022 U.S. Dist. LEXIS 116417, at *5-6 (D. Minn. June 30, 2022)

- According to plaintiff, the St. Paul Police Department espouses [*6] a "warrior mentality" in which officers are instructed to treat suspects as enemy combatants. Drago Report, ECF No. 52-1, ¶ 5. She bases this belief on a 2012 speech made by a St. Paul police officer unrelated to this case in which he encouraged officers to treat suspects as enemy combatants. Id. There is no evidence in the record that Norman or Younce were in the audience during the speech or that they otherwise agree with or were trained under that approach. See Norman Dep. at 73:21-74:4; Younce Dep. at 137:2-39:2. Further, Todd Axtell, who has been the chief of the St. Paul Police Department since 2016, banned warrior training. Axtell Dep. at 139:4-42:4. He views police officers as guardians rather than warriors. Id. at 141:5-15. As such, he believes that police officers are collaborative partners with the community and has emphasized that philosophy throughout his tenure. Id.at 139:4-42:4.

Allegations of Failure to Train

- The remaining claim asserted against Sheriff Wade in Count Three is the failure to train his deputies in emergency medical care. Duncan alleges that the cancellation of the helicopter air-lift that was originally called to provide paramedic services to Duncan and the inability of the Bibb County Sheriff's Deputies to properly provide emergency medical care for citizens injured by the use of excessive and/or deadly force is also a result of Sheriff Wade's failure to train emergency medical care.
  Duncan v. Bibb Cty. Sheriff's Dep't, 471 F. Supp. 3d 1243, 1259 (N.D. Ala. 2020)

Most Circuits-Pattern unless obvious need

- If the court were to accept this argument, then anytime a plaintiff alleges any incident—even one involving only a single officer—of excessive force or improper emergency medical care, such an allegation would also demonstrate a failure to train. However, the Supreme Court has instructed that "adequately trained officers occasionally make mistakes" and "the fact that they do says little about the training program . . . ." *City of Canton v. Harris*, 489 U.S. 378, 391, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989).
  Duncan v. Bibb Cty. Sheriff's Dep't, 471 F. Supp. 3d 1243, 1261 (N.D. Ala. 2020)

BUT…OBVIOUS NEED

- Here, the violation of an individual's constitutional right to be free from unreasonable search and seizure, including the use of excessive force, was the obvious consequence of the failure to train a deputy sheriff on the limitations of the use of lethal force. The risk of such violations by deputy sheriffs who are armed yet untrained on the use of deadly force and unsupervised is so apparent that the failure to train Holmes would constitute deliberate interest on the part of Grundy County. *See Bryan Cnty.*, 520 U.S. at 409-10 ("The likelihood that the situation will recur and the predictability that an officer lacking specific tools to handle that situation will violate citizens' rights could justify a finding that policymakers' decision not to train the officer reflected "deliberate indifference" to the obvious consequence [*35] of the policymakers' choice[.]").
  Comer v. Shrum, No. 4:18-cv-58, 2021 U.S. Dist. LEXIS 269291, at *34-35 (E.D. Tenn. June 16, 2021)

- In *Canton*, the Supreme Court gave the example that, because "city policymakers know to a moral certainty that their police officers will be required to arrest fleeing felons" and "[t]he city has armed its officers with firearms, in part to accomplish this task," "the need to train officers in the constitutional limitations on the use of deadly force can be said to be 'so obvious,' that the failure to do so could properly be characterized as 'deliberate indifference' to constitutional rights." 489 U.S. at 390 n.10 (citations omitted) ("It could also be said that the police, in exercising their discretion, so often violate constitutional rights that the need for further training must have been plainly obvious to the city policymakers, who, nevertheless, are 'deliberately indifferent' to the [*17] need.").
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  Comer v. Shrum, No. 4:18-cv-58, 2021 U.S. Dist. LEXIS 269291, at *16-17 (E.D. Tenn. June 16, 2021)

- Defendants give no details as to the extent of the training, what was discussed, when the training took place, who administered the training, or any other relevant facts.**4** Although Shrum attaches Grundy County's general policies on the use of deadly force to the affidavit, there is nothing in the record to suggest that Holmes saw or read this policy or that he was trained to act in accordance therewith. Comer v. Shrum, No. 4:18-cv-58, 2021 U.S. Dist. LEXIS 269291, at *26 (E.D. Tenn. June 16, 2021)

- The expert report attached to John Ryan's affidavit indicates that Ryan reviewed Holmes's training file and personnel file in preparing his report. (Doc. 70-3, at 39-40.) However, these documents have not been provided to the Court. Ryan's report does provide a summary of the materials in Holmes's training file, which indicates that Holmes received the following training prior to beginning employment in Grundy County:
- • May 2010: "in-service firearms training" (length and location [*31] of training unspecified)
- • June 2011: "26 hours of training," including training on child sexual abuse and emergency-vehicle operation (location unspecified)
- • May 2011: "firearms training" (length and location unspecified)
- • December 2012: "firearms training" (length and location unspecified)
- • September 2013: "8 hours of in-service training" (location unspecified)
- • December 2013: "32-hour Basic In-Service training," including training on search and seizure, legal updates, and emergency-vehicle operation (location unspecified)
- • July and September 2014: "in-service training which included firearms" (length and location unspecified)
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  Comer v. Shrum, No. 4:18-cv-58, 2021 U.S. Dist. LEXIS 269291, at *30-31 (E.D. Tenn. June 16, 2021)

- Ryan's report further states that Holmes "attended 40 hours of in-service training for the Grundy County Sheriff's Office" in 2016, completing these hours in August 2016. (*Id.*) The report notes "that[,] in May of 2016, the in-service [*32] training included eight hours of training on the Sheriff's Office's policies and procedures" and "[i]n June of 2016, the in-service training covered vehicle stops and officer safety during emergency driving as well as officer survival during officer involved shootings." (*Id.*) However, Holmes was not hired to work in Grundy County until July 2016, and it is unclear whether these trainings count as "in-service training" for the purposes of the POST Rules and whether the use of deadly force was specifically discussed. (*See also* Doc. 78-3, at 12-13 (Holmes stating that he attended some training with Grundy County before he began working there while he was unemployed).) Ryan's report also states that the August 2016 training lesson plan "included training on situations where each weapon may be justified." (Doc. 70-3, at 66.) Lastly, it is noted that "Holmes attended 40 hours of in-service training . . . between February 6, 2017 and May 25, 2017," but no specifics are offered regarding this training. (*Id.*) Comer v. Shrum, No. 4:18-cv-58, 2021 U.S. Dist. LEXIS 269291, at *31-32 (E.D. Tenn. June 16, 2021)

- The fact that Tennessee law only requires eighty hours of unspecified training for part-time law-enforcement officers does not absolve Grundy County of the need to train those acting as deputy sheriffs concerning the use of deadly force. As with the hypothetical policymakers in *Canton*, Shrum and Bean, as policymakers for Grundy County, "know to a moral certainty that their [deputy sheriffs] will be required to arrest fleeing felons." 489 U.S. at 390 n.10. [*34] The County also "armed its deputy sheriffs with firearms, in part to allow them to accomplish this task." *Id.* Accordingly, as in the *Canton* hypothetical, "the need to train [deputy sheriffs] in the constitutional limitations on the use of deadly force . . . can be said to be 'so obvious,' that the failure to do so could properly be characterized as 'deliberate indifference' to constitutional rights." *Id.* Comer v. Shrum, No. 4:18-cv-58, 2021 U.S. Dist. LEXIS 269291, at *33-34 (E.D. Tenn. June 16, 2021)

Legal versus Best Practice-Based Policies

Tennessee v. Garner, 471 U.S. 1,9 (1985).

- The fact is that a majority of police departments **[*11]** in this country have forbidden the use of deadly force against nonviolent suspects. See *infra*, at 18-19. If those charged with the enforcement of the criminal law have abjured the use of deadly force in arresting nondangerous felons, there is a substantial basis for doubting that the use of such force is an essential attribute of the arrest power in all felony cases.

Jefferson v. Lias, No. 20-2526, 2021 U.S. App. LEXIS 37115, at *28-29 (3d Cir. Dec. 16, 2021)

Concurring Opinion: “I write separately because I think it is important to explain that the deference to law enforcement that consistently results in qualified immunity in excessive force cases is inconsistent with the vast amount of research in such cases as well as the evolving national consensus of law enforcement organizations.”

It stands to reason that police agencies like the IACP are much more aware than judges of the need to respect an individual officer's "heat of the moment" decision. Accordingly, as I will explain, given these studies and policies, it should by now be crystal clear that, except for a narrow set of circumstances that police agencies have already carefully defined, it is *never* reasonable for a police officer to open fire on a suspect fleeing in a motor vehicle. Far from being reasonable, it will almost always be reckless. And police recognize as much.

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